

No. 16-15172

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CORNELE A. OVERSTREET, Regional Director of the Twenty-Eighth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

Petitioner–Appellee,

v.

SHAMROCK FOODS COMPANY,

Respondent–Appellant.

On Appeal from the United States District Court
for the District of Arizona
No. 2:15-cv-01785-DJH
The Honorable Diane J. Humetewa

Appellant’s Excerpts of Record: Volume II of II

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Excerpt 5

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9 **IN THE UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF ARIZONA

10	CORNELE A. OVERSTREET,)	Case No.
11	Regional Director of the Twenty-Eighth)	
12	Region of the National Labor Relations)	
13	Board, for and on behalf of the)	PETITION FOR TEMPORARY
14	National Labor Relations Board,)	INJUNCTION UNDER SECTION 10(j)
15	Petitioner,)	OF THE NATIONAL LABOR
16	v.)	RELATIONS ACT, AS AMENDED
17	SHAMROCK FOODS COMPANY,)	[29 U.S.C. § 160(j)]
18	Respondent.)	(Oral argument requested)
19)	

20 Cornele A. Overstreet, Regional Director of Region 28 (Regional
21 Director) of the National Labor Relations Board (Board), petitions this Court, for and on
22 behalf of the Board, pursuant to Section 10(j) of the National Labor Relations Act, as
23 amended [61 Stat. 149; 73 Stat. 544; 29 U.S.C. § 160(j)] (Act), for appropriate
24 injunctive relief pending the final disposition of the matters involved herein pending a
25 decision by the Board, on a complaint issued by the General Counsel of the Board
26

1 (General Counsel), alleging, inter alia, that Shamrock Foods Company (Respondent)
2 has engaged in, and is engaging in, acts and conduct in violation of Section 8(a)(1) and
3 (3) of the Act [29 U.S.C. § 158(a)(1) and (3)]. In support of this petition, Petitioner
4 respectfully shows the following:

5
6 1. Petitioner is the Regional Director of Region 28 of the Board, an agency
7 of the United States, and files this petition for and on behalf of the Board.

8 2. This Court has jurisdiction pursuant to Section 10(j) of the Act [29 U.S.C.
9 § 160(j)], which provides, inter alia, that the Board shall have the power, upon issuance
10 of a complaint charging that any person has engaged in unfair labor practices, to petition
11 this Court for appropriate temporary injunctive relief or a restraining order pending final
12 disposition of the matter by the Board.

13
14 3. (a) On April 15, 2015, Bakery, Confectionery, Tobacco Workers' and
15 Grain Millers International Union, Local Union No. 232, AFL-CIO-CLC (Union), filed
16 a charge with the Board, in Case 28-CA-150157, alleging, inter alia, that Respondent
17 has engaged in, and is engaging in, unfair labor practices within the meaning of Section
18 8(a)(1) of the Act [29 U.S.C. § 158(a)(1)]. PX 1.¹

19 (b) On May 22, 2015, the Union filed a first amended charge with the
20 Board, in Case 28-CA-150157, alleging, inter alia, that Respondent has engaged in, and
21 is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of
22 the Act [29 U.S.C. § 158(a)(3)]. PX 3.

23
24 ¹ Petitioner has filed evidence in support of this Petition, contained within an Appendix
25 of Exhibits, which includes the affidavits and supplemental exhibits. References to the
26 Appendix of Exhibits will be designated as "PX" followed by the appropriate exhibit
number, and, as appropriate, the page and line number(s) of the respective exhibit.

1 (c) On June 26, 2015, the Union filed a second amended charge with
2 the Board, in Case 28-CA-150157, alleging, inter alia, that Respondent has engaged in,
3 and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3)
4 of the Act [29 U.S.C. § 158(a)(1) and (3)]. PX 5.

5
6 4. (a) The aforesaid charges were referred to Petitioner as Regional
7 Director for Region 28 of the Board.

8 (b) Upon receipt of the charges described above in paragraph 3, and
9 after the investigation of the charges in which Respondent was given the opportunity to
10 present evidence and legal argument, the General Counsel, on behalf of the Board,
11 pursuant to Section 10(b) of the Act [29 U.S.C. § 160(b)], issued a Complaint and
12 Notice of Hearing on July 21, 2015 (Complaint), alleging that Respondent engaged in,
13 and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3)
14 of the Act [29 U.S.C. § 158(a)(1) and (3)]. PX 7.

15
16 (c) On August 4, 2015, Respondent filed its Answer to the Complaint
17 (Answer to Complaint), denying the commission of any unfair labor practices. PX 8.

18 (d) The General Counsel, on behalf of the Board, pursuant to Section
19 10(b) of the Act [29 U.S.C. § 160(b)], issued an Amendment to the Complaint on
20 August 14, 2015 (Amendment) on August 13, 2015. PX 9.

21
22 (e) On August 26, 2015, Respondent filed its Answer to the
23 Amendment (Answer to Amendment), denying the commission of any unfair labor
24 practices. PX 10.

1 (f) A hearing before an administrative law judge of the Board has been
2 noticed and is scheduled to commence on September 8, 2015, in Phoenix, Arizona.

3 5. There is reasonable cause to believe that the allegations set forth in the
4 Complaint are true and Respondent has engaged in, and is engaging in, unfair labor
5 practices within the meaning of Section 8(a)(1) and (3) of the Act [29 U.S.C. §
6 158(a)(1) and (3)], which are affecting commerce within the meaning of Section 2(6)
7 and (7) of the Act [29 U.S.C. § 152 (6) and (7)], for which a remedy will be ordered by
8 the Board, but that the Board's order for such remedy will be frustrated without the
9 temporary injunctive relief sought herein. Petitioner asserts that there is a substantial
10 likelihood of success in prevailing in the underlying administrative proceedings in Case
11 28-CA-150157, and establishing that Respondent has engaged in, and is engaging in,
12 unfair labor practices in violation of Section 8(a)(1) and (3) of the Act [29 U.S.C. §
13 158(a)(1) and (3)] by, inter alia, threatening employees with adverse employment
14 actions because of their support for the Union; interrogating employees about their
15 protected activities; spying on its employees as they engage in protected activities and
16 making employees believe that their protected activities are constantly under
17 surveillance; soliciting grievances from employees and promising to correct those
18 grievances in an effort to undermine union support; instructing employees to ascertain
19 and disclose employees' sympathies for the Union; and confiscating employees' union
20 literature, and issuing discriminatory discipline to an vocal union supporter and
21 discharging another prominent union supporter because of their activities protected
22 under Section 7 of the Act [29 U.S.C. § 157], including their activities in support of the
23
24
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Union. In support thereof, and of the request for temporary injunctive relief, Petitioner, upon information and belief, shows the following:

(a) (1) At all material times, Respondent has been a corporation with an office and place of business in Phoenix, Arizona (Respondent's facility), and has been engaged in the wholesale distribution of food products.

(2) In conducting its operations during the 12-month period ending April 15, 2015, Respondent purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Arizona.

(3) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act [29 U.S.C. § 152(2), (6), and (7)].

(b) At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act [29 U.S.C. § 152(5)].

(c) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act [29 U.S.C. § 152(11)] and agents of Respondents within the meaning of Section 2(13) of the Act [29 U.S.C. § 152(13)]:

Ivan Vaivao	-	Warehouse Operations Manager
Mark Engdahl	-	Vice-President of Operation Foods Service
Kent McClelland	-	Chief Executive Officer
Dwayne Thomas	-	Third Shift Supervisor
Joe Remblance	-	Safety Manager
Armando Gutierrez	-	Warehouse Supervisor
Jerry Kropman	-	Plant Manager
Bob Beake	-	Director of Human Resources
Natalie Wright	-	Manager of Human Resources
David Garcia	-	Forklift Manager
Brian Nicklen	-	Forklift Manager
Jake Myers	-	Day Systems Shipping Supervisor

Leland Scott - Night Shift Dock Supervisor
Karen Garzon - Sanitation Supervisor
Art Manning - Floor Captain
Zack White - Floor Captain

(d) (1) About March 31, 2015, Respondent's employee Thomas Wallace concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees, by criticizing the health benefits offered by Respondent to employees during a Town Hall staff meeting at Respondent's facility.

(2) About January 25, 2015, Respondent, by Zack White, at Respondent's facility:

(i) interrogated its employees about their union membership, activities, and sympathies of other employees; and

(ii) by telling its employees that there were rumors in the warehouse about an organizing campaign, created an impression among its employees that their union activities were under surveillance by Respondent.

(3) About January 28, 2015, Respondent, by Mark Engdahl (Engdahl), at Respondent's facility:

(i) threatened its employees with loss of benefits by telling employees that when employees are represented by a union, the slate is wiped clean on wages, benefits, and other working conditions once collective bargaining begins; and

(ii) granted employees benefits by telling employees who complained about working conditions to make an appointment to come see Respondent.

1 (4) About January 28, 2015, Respondent, by Natalie Wright
2 (Wright), at Respondent's facility, by soliciting employee complaints and grievances,
3 promised its employees increased benefits and improved terms and conditions of
4 employment if its employees refrained from union organizational activity.

5
6 (5) About January 28, 2015, Respondent, by Jake Myers, at
7 Respondent's facility, interrogated its employees about their union membership,
8 activities, and sympathies.

9 (6) About January 28, 2015, Respondent, by Art Manning
10 (Manning), at Denny's restaurant on I-17 and Thomas Road in Phoenix, Arizona,
11 engaged in surveillance of its employees engaged in union activities.

12 (7) About February 5, 2015, Respondent, by Ivan Vaivao
13 (Vaivao), at Respondent's facility, by soliciting employee complaints and grievances,
14 promised its employees increased benefits and improved terms and conditions of
15 employment if its employees refrained from union organizational activity.

16
17 (8) About mid-February, 2015, a more precise date being
18 unknown to the General Counsel, by Vaivao and Wright, at Respondent's facility, by
19 soliciting employee complaints and grievances, promised its employees increased
20 benefits and improved terms and conditions of employment if its employees refrained
21 from union organizational activity.

22
23 (9) About February 24, 2015, Respondent, by Vaivao, at
24 Respondent's facility:

1 (i) by telling its employees that Respondent had an idea
2 of who was organizing, created an impression among its employees that their union
3 activities were under surveillance by Respondent; and

4 (ii) by asking its employees to raise their hand to let
5 Respondent know if another employee contacted them, asked its employees to ascertain
6 and disclose to Respondent the union membership, activities, and sympathies of other
7 employees.
8

9 (10) About March 26, 2015, Respondent, by Vaivao, Brian
10 Nicklen (Nicklen) and a Human Resource Representative, whose name is currently
11 unknown to the General Counsel, created an impression among its employees that their
12 union activities were under surveillance by Respondent by:
13

14 (i) telling its employees that Respondent knows
15 everything that is going on;

16 (ii) telling its employees that they should know that
17 Respondent knows who they are;

18 (iii) telling its employees that Respondent knows exactly
19 who they are; and

20 (iv) telling its employees that Respondent knew there was
21 a union meeting off property a few weeks ago and that Respondent knew who attended
22 these meetings.
23

24 (11) About March 26, 2015, Respondent, by Vaivao, Nicklen and
25 a Human Resource Representative, whose name is currently unknown to General
26

1 Counsel, informed its employees that it would be futile for them to select the Union as
2 their bargaining representative by telling employees that shifts cannot be changed.

3 (12) About April 6, 2015, Respondent discharged employee
4 Thomas Wallace (Wallace).

5 (13) Respondent engaged in the conduct described above in
6 paragraph 5(a)(12), because Wallace engaged in the conduct described above in
7 paragraph 5(a)(1), and to discourage employees from engaging in these or other
8 concerted activities.
9

10 (14) About April 6, 2015, Respondent promulgated and since
11 then has maintained the following overly-broad and discriminatory rules in its
12 Separation Agreement and Release and Waiver as presented to employee Wallace on
13 that same date:
14

15 (i) **Paragraph 9**

16 Because the information in this Separation Agreement is
17 confidential, it is agreed that you will not disclose the terms of this
18 Separation Agreement to anyone, except that you may disclose the
terms of this Separation Agreement to your family, your attorney,
your accountant, a state unemployment office, and to the extent
required by a valid court order or by law.

19 (ii) **Paragraph 10**

20 All information, whether written or otherwise, regarding the
21 Released Parties' businesses, including but not limited to financial,
personnel or corporate information . . . are presumed to be
confidential information of the Released Parties for purposes of this
Agreement.

22 (iii) **Paragraph 12**

23 You may not use/disclose any of the Company's Confidential
24 Information for any reason following your termination and during
the transition period.

25 (iv) **Paragraph 13**

26 You agree not to make any disparaging remarks or take any action
now, or at any time in the future, which could be detrimental to the
Released Parties.

1 (15) About April 27, 2015, Respondent, by Manning, at
2 Respondent's facility:
3

4 (i) by telling its employees that Respondent knew which
5 employees announced they were organizing for the union in the break room at
6 Respondent's facility, engaged in surveillance of employees engaged in union activities;
7 and

8 (ii) threatened its employees with unspecified reprisals
9 by telling employees that they had better watch their back because Respondent was
10 watching.
11

12 (16) About April 29, 2015, Respondent, by Engdahl, at
13 Respondent's facility:

14 (i) by telling its employees that Respondent understood
15 who was behind the Union, created the impression among its employees that their union
16 activities were under surveillance by Respondent;

17 (ii) threatened its employees with unspecified reprisals
18 by telling its employees the Union will hurt them;

19 (iii) threatened its employees with unspecified reprisals
20 by telling employees the Union will hurt everybody in the future;

21 (iv) by telling its employees that through collective
22 bargaining, Respondent does not have to agree to anything, informed employees that it
23 would be futile for them to select the Union as their bargaining representative.
24
25
26

1 (17) About April 29, 2015, Respondent, by Joe Remblance, at
2 Respondent's facility:

3 (i) interrogated its employees about their union
4 membership, activities, and sympathies; and

5 (ii) by watching its employees talk with each other
6 during non-working time and immediately asking them what they were discussing,
7 engaged in surveillance of employees engaged in union activities.
8

9 (18) About May 1, 2015, Respondent, by David Garcia, at
10 Respondent's facility:

11 (i) by searching through the personal belongings of its
12 employees, engaged in surveillance of its employees engaged in union activities;
13

14 (ii) created the impression among its employees that their
15 union activities were under surveillance by:

16 (A) telling its employees that Respondent knew
17 that employees handed a union card to another employee in the South End break room
18 at Respondent's facility; and

19 (B) informing its employees that Respondent was
20 looking for union cards.
21

22 (iii) by soliciting employee complaints and grievances,
23 promised its employees increased benefits and improved terms and conditions of
24 employment if its employees refrained from union organizational activity.
25
26

1 (19) About May 5, 2015, Respondent, by Engdahl and Vaivao, at
2 Respondent's facility:

3 (i) threatened its employees with unspecified reprisals,
4 by telling its employees that discussions and heckling related to the Union would not be
5 tolerated;
6

7 (ii) by telling its employees that Respondent knew that
8 there were problems on the floor, created the impression among its employees that their
9 union activities were under surveillance by Respondent; and

10 (iii) promulgated an overly-broad and discriminatory rule
11 that heckling, insulting or potential slow-down by its employees who did not share a
12 similar point of view would not be tolerated in response to its employees' organizing
13 activities.
14

15 (20) About May 8, 2015, Respondent, by a letter issued to its
16 employees from Kent McClelland:

17 (i) promulgated and has since maintained an overly-
18 broad and discriminatory rule prohibiting its employees from engaging in unlawfully
19 coercive behavior or bullying, in response to employees' organizing activities;
20

21 (ii) asked its employees to ascertain and disclose to
22 Respondent the union membership, activities, and sympathies of other employees, by
23 telling its employees to report co-workers who violate the rule described above in
24 paragraph 5(x)(1); and
25
26

1 (iii) threatened its employees with legal prosecution if
2 they violate the rule as described above in paragraph 5(x)(1).

3 (21) About May 25, 2015, Respondent, by Karen Garzon
4 (Garzon), at Respondent's facility:

5 (i) interrogated its employees about their union
6 membership, activities, and sympathies; and
7

8 (ii) by removing Union flyers from non-work areas while
9 permitting other non-work related literature to remain in non-work areas, selectively and
10 disparately enforced Respondent's overly-broad and discriminatory no-solicitation/no-
11 distribution rule.

12 (22) About May 29, 2015, Respondent, by Vaivao, at
13 Respondent's facility, by increasing the wage rate to certain of its employees, granted
14 benefits to its employees to dissuade its employees from supporting or voting for the
15 Union.
16

17 (23) About June 15, 16, 17 and July 8, 2015, Respondent, by
18 Garzon, at Respondent's facility, by removing Union flyers from non-work areas while
19 permitting other non-work related literature to remain in non-work areas, selectively and
20 disparately enforced Respondent's overly-broad and discriminatory no-solicitation/no-
21 distribution rule.
22

23 (b) (1) About May 5, 2015, Respondent disciplined its employee
24 Mario Lerma (Lerma).
25
26

1 (2) Respondent engaged in the conduct described above in
2 paragraph 5(a)(12), because Wallace assisted the Union and engaged in concerted
3 activities, and to discourage employees from engaging in these activities.

4 (3) Respondent engaged in the conduct described above in
5 paragraph 5(b)(1) because Lerma assisted the Union and engaged in concerted
6 activities, and to discourage employees from engaging in these activities.

7
8 6. By the conduct described above in paragraph 5(a), Respondent has been
9 interfering with, restraining, and coercing employees in the exercise of the rights
10 guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act [29 U.S.C. §
11 158(a)(1)].

12
13 7. By the conduct described above in paragraph 5(b), the Respondent has
14 been discriminating in regard to the hire or tenure or terms or conditions of employment
15 of its employees, thereby discouraging membership in a labor organization in violation
16 of Section 8(a)(1) and (3) of the Act [29 U.S.C. § 158(a)(1) and (3)].

17 8. The unfair labor practices of Respondent described above affect
18 commerce within the meaning of Section 2(6) and (7) of the Act [29 U.S.C. § 152(6)
19 and (7)].

20 9. Certain of the unfair labor practices of Respondent described above have
21 taken place within this judicial district.

22
23 10. Upon information and belief, unless injunctive relief is immediately
24 obtained, it can fairly be anticipated that employees will permanently and irreversibly
25 lose the benefits of the Board's processes and the exercise of statutory rights for the
26

1 entire period required for the Board adjudication of this matter, a harm which cannot be
2 remedied in due course by the Board.

3 11. There is no adequate remedy at law for the irreparable harm being caused
4 by Respondent's unfair labor practices, as described above in paragraphs 5 through 7.

5 13. Granting the temporary injunctive relief requested by Petitioner will cause
6 no undue hardship to Respondent.

7 14. In balancing the equities in this matter, if injunctive relief as requested is
8 not granted, the harm to the employees involved herein, to the public interest, and to the
9 purposes of the Act, would clearly outweigh any harm that the grant of such injunctive
10 relief will work on Respondent.

11 15. Upon information and belief, it may fairly be anticipated that unless
12 Respondent's conduct of the unfair labor practices described above in paragraph 5 is
13 immediately enjoined and restrained, Respondent will continue to engage in those acts
14 and conduct, or similar acts and conduct constituting unfair labor practices, during the
15 proceedings before the Board and during any subsequent proceedings before a United
16 States Court of Appeals, with the predictable result of continued interference with the
17 rights of employees to engage in activities protected by Section 7 of the Act [29 U.S.C.
18 § 157], with the result that employees will be deprived of their rights under Section 7
19 the Act [29 U.S.C. § 157], inter alia, to form, join, or assist a labor organization or to
20 refrain from any and all such activities, and will be denied their statutory right to engage
21 in other concerted activities for the purpose of collective bargaining or other mutual aid
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1 or protection, all to the detriment of the policies of the Act, the public interest, the
2 interest of the employees involved, and the interest of the Union.

3 16. Upon information and belief, to avoid the serious consequences set forth
4 above, it is essential, just, proper, and appropriate for the purposes of effectuating the
5 policies of the Act and the public interest, and to avoid substantial, irreparable, and
6 immediate injury to such policies and interest, and in accordance with the purposes of
7 Section 10(j) of the Act [29 U.S.C. § 160(j)] that, pending final disposition of the
8 matters now before the Board, Respondent be enjoined and restrained from committing
9 the acts and conduct alleged above, similar acts and conduct, or repetitions thereof, and
10 also be ordered to take the affirmative action set forth below in paragraph 2.

11
12 WHEREFORE, Petitioner prays:

13
14 1. That the Court issue an order directing Respondent to appear
15 before this Court, at a time and place fixed by the Court, and show cause why an
16 injunction should not issue and, after consideration, issue an injunction directing,
17 enjoining, and restraining Respondent, its officers, agents, servants, representatives,
18 successors, and assigns, and all persons acting in concert or participation with them,
19 pending the final disposition of the matters herein now pending before the Board, to
20 cease and desist from:

21
22 (a) interrogating employees about their union support and activities,
23 and the sympathies of other employees;

24 (b) creating the impression among employees that their union activities
25 are under surveillance;
26

1 (c) engaging in surveillance of employees' union or other protected
2 activity;

3 (d) threatening employees with loss of benefits if they select Bakery,
4 Confectionery, Tobacco Workers' and Grain Millers International Union, Local Union
5 No. 232, AFL-CIO-CLC (the Union) as their bargaining representative;
6

7 (e) informing employees that it is futile for them to select the Union or
8 any other labor organization as their bargaining representative;

9 (f) granting employees benefits, including, but not limited to,
10 increased wages, in response to their and others' union activity;

11 (g) soliciting employee complaints and grievances, and promising
12 employees increased benefits and improved terms and conditions of employment if they
13 refrain from union organizing activities;
14

15 (h) asking employees to ascertain or disclose the union membership,
16 activities and sympathies of other employees;

17 (i) threatening employees with unspecified reprisals because of their
18 activities in support of the Union;

19 (j) promulgating and maintaining overly-broad and discriminatory
20 rules in response to its employees' union organizing activities, and threatening
21 employees with legal prosecution for violating such rules;
22

23 (k) selectively and disparately enforcing its no-solicitation and no-
24 distribution rules based on employees' union and other protected activity;
25
26

1 (l) promulgating and maintaining overly-broad and discriminatory
2 rules within its Separation Agreement and Release and Waiver;

3 (m) disciplining employees by issuing them verbal warnings or
4 otherwise because they engage in union and other protected activity to discourage
5 employees from engaging in these activities;

6 (n) discharging employees because they engaged in concerted
7 activities involving their terms and conditions of employment or in activities in support
8 of the Union, and in order to discourage membership in the Union or in any other labor
9 organization;

10 (o) in any other manner interfering with, restraining, or coercing
11 employees in the exercise of the rights guaranteed them under Section 7 of the National
12 Labor Relations Act [29 U.S.C. § 157].

13
14
15 2. That the Court require Respondent to take the following affirmative
16 actions:

17 (a) Within five (5) days of this Order, withdraw its offer to Wallace of
18 the Separation Agreement and Release and Waiver presented to him about April 6,
19 2015, and notify Wallace in writing that the offer has been withdrawn and that it is no
20 longer seeking his agreement to the Separation Agreement and Release and Waiver,
21 including, but not limited to, the following provisions:

22
23 (1) **Paragraph 9**

24 Because the information in this Separation Agreement is
25 confidential, it is agreed that you will not disclose the terms of this
26 Separation Agreement to anyone, except that you may disclose the
terms of this Separation Agreement to your family, your attorney,

1 your accountant, a state unemployment office, and to the extent
2 required by a valid court order or by law.

3 (2) **Paragraph 10**

4 All information, whether written or otherwise, regarding the
5 Released Parties' businesses, including but not limited to financial,
6 personnel or corporate information . . . are presumed to be
7 confidential information of the Released Parties for purposes of this
8 Agreement.

9 (3) **Paragraph 12**

10 You may not use/disclose any of the Company's Confidential
11 Information for any reason following your termination and during
12 the transition period.

13 (4) **Paragraph 13**

14 You agree not to make any disparaging remarks or take any action
15 now, or at any time in the future, which could be detrimental to the
16 Released Parties.

17 (b) Within five (5) days of this Order, rescind the letter dated May 8,
18 2015, from Kent McClelland to its employees, including the rule therein prohibiting
19 employees from engaging in unlawfully coercive behavior or bullying, the instruction to
20 employees to report employees who violate that rule, and the threat of legal prosecution
21 of employees who violate that rule, and notify employees in writing that the letter is
22 rescinded, void, of no effect, and will not be enforced;

23 (c) Within five (5) days of this Order, remove from its files, any and
24 all records of the verbal warning issued to Mario Lerma, and within three (3) days
25 thereafter, notify him, in writing, that this was done, and that the verbal warning will not
26 be used against him in any way;

(d) Within five (5) days of this Order, offer Thomas Wallace, in
writing, immediate reinstatement to his former job, or if that jobs no longer exists, to a

1 substantially equivalent position of employment, without prejudice to his seniority and
2 other rights and privileges previously enjoyed, displacing if necessary any workers hired
3 or transferred to replace him;

4 (e) Within five (5) days of this Order, remove from its files, any and
5 all records of the discharge of Thomas Wallace, and within three (3) days thereafter,
6 notify him in writing that this was done, and that the discharge will not be used against
7 him in any way;

8 (f) Within fourteen (5) days of this Order, post copies of this Order, as
9 well as translations of this Order provided by the Regional Director of the Board in
10 languages other than English as necessary to ensure effective communication to
11 Respondent's employees, at Respondent's facilities located at 2450 N. 29th Ave.,
12 Phoenix, Arizona, and 2228 N. Black Canyon Highway, Phoenix, Arizona, in all places
13 where notices to its employees are normally posted; maintain these postings during the
14 pendency of the Board's administrative proceeding free from all obstructions and
15 defacements; grant all employees free and unrestricted access to said postings; and grant
16 to agents of the Board reasonable access to its facilities to monitor compliance with this
17 posting requirement;

18 (g) Within ten (10) days of the Court's issuance of this Order, hold a
19 mandatory meeting or meetings during working time at Respondent's facilities located
20 at 2450 N. 29th Ave., Phoenix, Arizona, and 2228 N. Black Canyon Highway, Phoenix,
21 Arizona, at which this Order is to be read aloud by a responsible management official in
22 the presence of an agent of the Board, or at Respondent's option by an agent of the
23
24
25
26

1 Board in that official's presence, translated into languages other than English as
2 necessary to ensure the effective communication with Respondent's employees, to all
3 employees employed at Respondent's facilities located at 2450 N. 29th Ave., Phoenix,
4 Arizona, and 2228 N. Black Canyon Highway, Phoenix, Arizona, including at multiple
5 meetings as necessary to ensure that the Order is read aloud to all employees; and
6

7 (h) Within twenty-one (21) days of this Order, file with the Court, and
8 submit a copy to the Regional Director for Region 28 of the Board, a sworn affidavit
9 from a responsible agent of Respondent stating, with specificity, the manner in which
10 Respondent has complied with the terms of the Injunction Order.

11 3. That upon return of the Order to Show Cause, the Court issue an Order
12 Granting Temporary Injunction enjoining and restraining Respondent in the manner set
13 forth above.
14

15 4. That the Court grant such further and other relief as may be just and
16 proper.

17 Dated at Phoenix, Arizona, this 8th day of September, 2015.
18

19 /s/ Judith Davila

Judith Davila, Esq.

Sara Demirok, Esq.

Elise Oviedo, Esq.

22 On behalf of:

23 Cornele A. Overstreet, Regional Director
24 National Labor Relations Board, Region 28
25 2600 N. Central Avenue, Suite 1400
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Excerpt 6

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8
9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 **CORNELE A. OVERSTREET,**
13 **Regional Director of the Twenty-Eighth**
14 **Region of the National Labor Relations**
15 **Board, for and on behalf of the**
16 **National Labor Relations Board,**

17 **Petitioner,**

18 **v.**

19 **Shamrock Foods Company,**

20 **Respondent.**
21
22
23
24
25
26

Case No. 2:15-cv-01785-DJH

**PETITIONER'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PETITION FOR
TEMPORARY INJUNCTION
UNDER SECTION 10(j) OF THE
NATIONAL LABOR
RELATIONS ACT**

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1 **7. Respondent Confiscated Union Literature and**
 2 **Disparately Enforced Its Distribution Policy**

3 While employers can maintain rules against solicitation during working time in
 4 working areas and rules against distribution of literature in working areas, a no-
 5 solicitation or no-distribution rule which is valid on its face may be unlawful if the rule
 6 was discriminatorily promulgated or enforced. *See, e.g., Reno Hilton Resorts*, 320
 7 NLRB 197 (1995). Further, confiscation of union literature, which employees have a
 8 well-established right to possess, is unlawful, even in areas where an employer could
 9 lawfully prohibit distribution of literature. *Manor Care of Easton, PA, LLC*, 356 NLRB
 10 No. 39, slip op. at 4 (2010), *enforced on other grounds*, 611 F.3d 1139 (D.C. Cir. 2011).

12 Here, beginning on May 25 and continuing through June, Sanitation Supervisor
 13 Garzon confiscated union literature from the breakroom, sometimes even picking up
 14 flyers from between the arms of employees looking at them. PX 26, 5. Although
 15 Respondent may argue that it was merely enforcing its distribution policy, Garzon's
 16 actions interfered with distribution and possession of union literature in non-working
 17 areas, and Garzon only began confiscating literature from the break room after Phipps
 18 began openly supporting the Union. This change in practice as a "countermeasure
 19 against the union campaign" was unlawful. *Intertape Polymer Corp.*, 360 NLRB No.
 20 114, slip op. at 1 (2014) (citing *Bon Marche*, 308 NLRB 184, 185 (1992)).

22 **8. Respondent Increased Wages to Discourage Support for**
 23 **the Union**

24 Promising and granting increased benefits after a union campaign commences
 25 squarely violates Section 8(a)(1) of the Act [29 U.S.C. §158(a)(1)]. As the Supreme
 26

Excerpt 7

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

CORNELE A. OVERSTREET,

Petitioner,

vs.

SHAMROCK FOODS COMPANY,

Respondent.

Case No. 2:15-cv-01785-DJH

**RESPONDENT'S MEMORANDUM IN
OPPOSITION TO PETITIONER'S
PETITION FOR TEMPORARY
INJUNCTION UNDER SECTION 10(j)
OF THE NATIONAL LABOR
RELATIONS ACT**

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(*Id.* at 52, emphasis added.) While Wallace’s own affidavit is sufficient to rebut the General Counsel’s claim, Phipps’ testimony forecloses the argument entirely.

V. PETITIONER CANNOT ESTABLISH A LIKELIHOOD OF SUCCESS ON THE MERITS.

Because Petitioner’s inability to establish irreparable harm requires dismissal of its 10(j) petition, the General Counsel’s failure to demonstrate a likelihood of success on the merits is cumulative.⁵ Shamrock therefore will rebut Petitioner’s claimed violations, but in summary form to avoid needless consumption of the Court’s resources. If the Court believes that the record developed by the parties in briefing is not sufficient to dismiss the petition, however, Shamrock again submits that an evidentiary hearing is necessary in light of the various flaws that preclude admission of the General Counsel’s exhibits. (See Doc. 27, Doc. 28).

“discharged employees.” (Ex. 1 at 607-608). However, only three lines later on the same page, Phipps again uses the term “discharged employees” and refers specifically to Wallace. (PX25 at 52).

⁵ The balance of equities and the public interest similarly require denial of the 10(j) petition. As explained above, an injunction would present significant risk of restraining Shamrock’s Section 8(c) free speech rights. The Supreme Court has recognized the strong public policy interests underlying Section 8(c):

It is indicative of how important Congress deemed such free debate that Congress amended the NLRA rather than leaving to the courts the task of correcting the NLRB’s decisions on a case-by-case basis. We have characterized this policy judgment, which suffuses the NLRA as a whole, as favoring uninhibited, robust, and wide-open debate in labor disputes, stressing that freewheeling use of the written and spoken word . . . has been expressly fostered by Congress and approved by the NLRB.

Chamber of Commerce of the United States v. Brown, 554 U.S. 60, 67-68 (U.S. 2008) (internal quotations and citations omitted). The Union, on the other hand, apparently is continuing its organizing efforts with a high degree of success. The Board’s traditional remedial powers will provide an effective remedy in the unlikely event that any violations are found. Thus, the burden on Shamrock’s right of free speech is not counterbalanced by any competing equitable or public interests.

Excerpt 8

PX 7

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY

and

Case 28-CA-150157

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL
UNION NO. 232, AFL-CIO-CLC**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union, Local Union No. 232, AFL-CIO-CLC (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Shamrock Foods Company (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Union on April 15, 2015, and a copy was served on Respondent by U.S. mail on April 16, 2015.
- (b) The first amended charge in this proceeding was filed by the Union on May 22, 2015, and a copy was served on Respondent by U.S. mail on that same date.
- (c) The second amended charge in this proceeding was filed by the Union on June 26, 2015, and a copy was served on Respondent by U.S. mail on that same date.

2. (a) At all material times, Respondent has been a corporation with an office and place of business in Phoenix, Arizona (Respondent's facility), and has been engaged in the wholesale distribution of food products.

(b) In conducting its operations during the 12-month period ending April 15, 2015, Respondent purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Arizona.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

Ivan Vaivao	-	Warehouse Operations Manager
Mark Engdahl	-	Vice-President of Operation Foods Service
Kent McClelland	-	Chief Executive Officer
Dwayne Thomas	-	Third Shift Supervisor
Joe Remblance	-	Safety Manager
Armando Gutierrez	-	Warehouse Supervisor
Jerry Kropman	-	Plant Manager
Natalie Wright	-	Manager of Human Resources
Brian Nicklen	-	Forklift Manager
Jake Myers	-	Day Systems Shipping Supervisor
Leland Scott	-	Night Shift Dock Supervisor
Karen Garzon	-	Sanitation Supervisor
Art Manning	-	Floor Captain
Zack White	-	Floor Captain

5. (a) About March 31, 2015, Respondent's employee Thomas Wallace concertedly complained to Respondent regarding the wages, hours, and

working conditions of Respondent's employees, by criticizing the health benefits offered by Respondent to employees during a Town Hall staff meeting at Respondent's facility.

(b) Since about October 15, 2014, Respondent has maintained the following overly-broad and discriminatory rules in its Associate Handbook:

(1) **Protecting the Company's Confidential Information**

The Company's confidential information is a valuable asset and includes: information, knowledge, or data concerning . . . associates, . . . Company manuals and policies, . . . calendars and/or day-timers that contain customer contact and other customer information, [and] compensation schedules[.]

* * *

All confidential information must be used for Company business purposes only. Every associate, agent, and contractor must safeguard it. **THIS RESPONSIBILITY INCLUDES NOT DISCLOSING THE COMPANY CONFIDENTIAL INFORMATION, INCLUDING INFORMATION REGARDING THE COMPANY'S PRODUCTS OR BUSINESS, OVER THE INTERNET, INCLUDING THROUGH SOCIAL MEDIA.**

(2) **Non-Disclosure/ Assignment Agreement.**

When you joined the Company, you signed an agreement to protect and hold confidential the Company's proprietary information. This agreement remains in effect for as long as you work for the Company and after you leave the Company. Under this agreement you may not disclose the Company's confidential information to anyone or use it to benefit anyone other than the Company without the prior written consent of an authorized Company officer.

(3) **Requests by Regulatory Authorities.**

All government requests for information, documents or investigative interviews must be referred to the Company's Human Resources Department.

(4) **Company Spokespeople.**

The Company has an established Spokesperson who handles all requests for information from the Media. Ms. Sandra Kelly at the

Dairy is the person who has been designated to provide overall Company information or to respond to any public events or issues for which we might receive press calls or inquiries. If you believe that an event or situation may result in the press seeking additional information, please contact Ms. Kelly at the Dairy to advise her of the nature of the situation so that she may be prepared for any calls.

(5) **Electronic and Telephonic Communications**

All electronic and telephonic communications systems and all communications and information transmitted by, received from, or stored in these systems are the property of Shamrock and as such are to be used solely for job-related purposes. The use of any software and business equipment, including, but not limited to, facsimiles, computers, the Company's E-mail system, the Internet, and copy machines for private purposes is strictly prohibited.

* * *

Moreover, improper use of the E-mail system (e.g., spreading offensive jokes or remarks), including the Internet, will not be tolerated.

(6) Monitoring Use

Shamrock reserves the right to use software and blog-search tools to monitor comments or discussions about company representatives, customers, vendors, other associates, the company and its business and products, or competitors that associates or non-associates post anywhere on the Internet, including in blogs and other types of openly accessible personal journals, diaries, and personal and business discussion forums.

(7) E-Mail

Associates are prohibited from using any Instant Messaging applications except those provided specially by Shamrock for Associate's business use.

(8) World Wide Web

As a general rule, associates may not forward, distribute, or incorporate into another work, material retrieved from a Web site or other external system.

* * *

2. No Downloading of Non-Business Related Data: The Company allows the download of files from the Internet. However, downloading

files should be limited to those that relate directly to Shamrock business.

* * *

4. No Participation in Web-Based Surveys without Authorization:

When using the Internet, the user implicitly involves Shamrock in his/her expression. Therefore, users should not participate in Web or E-mail based surveys or interviews without authorization. (page 60)

(9) Blogging

The following rules and guidelines apply to blogging, whether blogging is done for Shamrock on company time, on a personal Web site during non-work time, or outside the workplace. The rules and guidelines apply to all associates.

(A) Shamrock discourages associates from discussing publicly any work-related matters, whether confidential or not, outside company-authorized communications. Nonofficial company communications include Internet chat rooms, associates' personal blogs and similar forms of online journals or diaries, personal newsletters on the Internet, and blogs on Web sites not affiliated with, sponsored, or maintained by Shamrock.

(B) Associates have a duty to protect associates' home addresses . . . and other personal information and . . . financial information . . . and nonpublic company information that associates can access.

(C) Associates cannot use blogs to harass, threaten, libel, or slander, malign, defame or disparage, or discriminate against co-workers, managers, customers, clients, vendors or suppliers, and organizations associated or doing business with Shamrock, or members of the public, including Web site visitors who post comments about blog contents.

(D) Associates cannot use Shamrock's logo or trademarks or the name, logo, or trademarks of any business partner, supplier, vendor, affiliate, or subsidiary on any personal blogs or other online sites unless their use is sponsored or otherwise sanctioned, approved, or maintained by Shamrock.

* * *

Associates cannot post on personal blogs Shamrock's copyrighted information or company-issued documents bearing Shamrock's name, trademark, or logo.

(E) Associates cannot post on personal blogs photographs of company events, other associates or company representatives engage in Shamrock's business, or company products, unless associates have received Shamrock's explicit permission.

(F) Shamrock discourages associates from linking to Shamrock's external or internal Web site from personal blogs.

(10) *Guideline to Prohibited Activities*

The following behaviors are examples of previously stated or additional actions to activities that are prohibited and considered improper use of the Internet, E-mail or voicemail systems provided by Shamrock. These examples are provided as guidelines only and are not all-inclusive:

(A) Sending or posting confidential material, trade secrets, or proprietary information outside of the organization.

(B) Refusing to cooperate with security investigations.

(C) Sending or posting chain letters, solicitations, or advertisements not related to business purposes or activities.

(D) Sending or posting messages that disparage another organization.

(11) *Reporting Violations*

Shamrock requests and urges associates to use official company communications to report violations of Shamrock's blogging rules and guidelines, customers' or associates' complaints about blog content, or perceived misconduct or possible unlawful activity related to blogging, including security breaches, misappropriation or theft of proprietary business information, and trademark infringement.

Associates can report actual or perceived violations to supervisors, other managers, or to Human Resources.

(12) *Reporting Violations*

As a condition of employment and continued employment, associates are required to sign an Electronic and Telephonic Communications

Acknowledgement Form. Applicants are required to sign this form on acceptance of an employment offer by Shamrock.

(13) **Guidelines to Appropriate Conduct**

Listed below are some of the rules and regulations of Shamrock. This list should not be viewed as all-inclusive. It is intended only to illustrate the types of behavior and conduct that Shamrock considers inappropriate and grounds for disciplinary action up to and including termination of employment without prior warning, at the sole discretion of the company, including, but not limited to, the following:

(A) Theft and/or deliberate damage or destruction of property not belonging to the associate, including the misuse or unauthorized use of any products, property, tools, equipment of any person or the unauthorized use of any company-owned equipment.

(B) Any act that interferes with another associate's right to be free from harassment or prevents an associate's enjoyment of work . . . or conduct that creates a disturbance in the workplace.

(14) **No Solicitation, No Distribution**

The conducting of non-company business related activities is prohibited during the working time by either the associate doing the soliciting or the associate being solicited or at any time in customer or public areas. Associates may not solicit other associates under any circumstances for any non-company related activities.

The distribution of non-company literature, such as leaflets, letters or other written materials by an associate is not permitted . . . any time in working areas or in customer and public areas.

(15) **No Solicitation, No Distribution**

If you would like to post any Shamrock business-related materials, please see your Department Manager, the General/Branch Manager or the Human Resources Representative. Only these individuals are authorized to approve and post information on Shamrock bulletin boards.

(c) Since about October 15, 2014, Respondent has, by maintaining policies in its Associate Handbook, threatened its employees with discipline and/ or discharge

for violating the overly-broad and discriminatory work rules as described in paragraphs 5(b)(5) and 5(b)(9) through 5(b)(12).

(d) Since about October 15, 2014, Respondent has, by maintaining the work rule as described in paragraph 5(b)(6), created an impression among its employees that their union and other protected activities were under surveillance by Respondent.

(e) Since about October 15, 2014, Respondent has, by maintaining the work rule as described in paragraph 5(b)(11), solicited its employees to report other employees who engage in union and other protected activities to Respondent.

(f) About January 25, 2015, Respondent, by Zack White, at Respondent's facility:

(1) interrogated its employees about their union membership, activities, and sympathies of other employees; and

(2) by telling its employees that there were rumors in the warehouse about an organizing campaign, created an impression among its employees that their union activities were under surveillance by Respondent.

(g) About January 28, 2015, Respondent, by Mark Engdahl (Engdahl), at Respondent's facility:

(1) threatened its employees with loss of benefits by telling employees that when employees are represented by a union, the slate is wiped clean on wages, benefits, and other working conditions once collective bargaining begins; and

(2) granted employees benefits by telling employees who complained about working conditions to make an appointment to come see Respondent.

(h) About January 28, 2015, Respondent, by Natalie Wright (Wright), at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(i) About January 28, 2015, Respondent, by Jake Myers, at Respondent's facility, interrogated its employees about their union membership, activities, and sympathies.

(j) About January 28, 2015, Respondent, by Art Manning (Manning), at Denny's restaurant on I-17 and Thomas Road in Phoenix, Arizona, engaged in surveillance of its employees engaged in union activities.

(k) About February 5, 2015, Respondent, by Ivan Vaivao (Vaivao), at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(l) About mid-February, 2015, a more precise date being unknown to the General Counsel, by Vaivao and Wright, at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(m) About February 24, 2015, Respondent, by Vaivao, at Respondent's facility:

(1) by telling its employees that Respondent had an idea of who was organizing, created an impression among its employees that their union activities were under surveillance by Respondent; and

(2) by asking its employees to raise their hand to let Respondent know if another employee contacted them, asked its employees to ascertain and disclose to Respondent the union membership, activities, and sympathies of other employees.

(n) About March 26, 2015, Respondent, by Vaivao, Brian Nicklen (Nicklen) and a Human Resource Representative, whose name is currently unknown to the General Counsel, created an impression among its employees that their union activities were under surveillance by Respondent by:

(1) telling its employees that Respondent knows everything that is going on;

(2) telling its employees that they should know that Respondent knows who they are;

(3) telling its employees that Respondent knows exactly who they are; and

(4) telling its employees that Respondent knew there was a union meeting off property a few weeks ago and that Respondent knew who attended these meetings.

(o) About March 26, 2015, Respondent, by Vaivao, Nicklen and a Human Resource Representative, whose name is currently unknown to General Counsel,

informed its employees that it would be futile for them to select the Union as their bargaining representative by telling employees that shifts cannot be changed.

(p) About April 6, 2015, Respondent discharged employee Thomas Wallace (Wallace).

(q) Respondent engaged in the conduct described above in paragraph 5(p), because Wallace engaged in the conduct described above in paragraph 5(a), and to discourage employees from engaging in these or other concerted activities.

(r) About April 6, 2015, Respondent promulgated and since then has maintained the following overly-broad and discriminatory rules in its Separation Agreement and Release and Waiver as presented to employee Wallace on that same date:

(1) **Paragraph 9**

Because the information in this Separation Agreement is confidential, it is agreed that you will not disclose the terms of this Separation Agreement to anyone, except that you may disclose the terms of this Separation Agreement to your family, your attorney, your accountant, a state unemployment office, and to the extent required by a valid court order or by law.

(2) **Paragraph 10**

All information, whether written or otherwise, regarding the Released Parties' businesses, including but not limited to financial, personnel or corporate information . . . are presumed to be confidential information of the Released Parties for purposes of this Agreement.

(3) **Paragraph 12**

You may not use/disclose any of the Company's Confidential Information for any reason following your termination and during the transition period.

(4) **Paragraph 13**

You agree not to make any disparaging remarks or take any action now, or at any time in the future, which could be detrimental to the Released Parties.

(s) About April 27, 2015, Respondent, by Manning, at

Respondent's facility:

(1) by telling its employees that Respondent knew which employees announced they were organizing for the union in the break room at Respondent's facility, engaged in surveillance of employees engaged in union activities; and

(2) threatened its employees with unspecified reprisals by telling employees that they had better watch their back because Respondent was watching.

(t) About April 29, 2015, Respondent, by Engdahl, at

Respondent's facility:

(1) by telling its employees that Respondent understood who was behind the Union, created the impression among its employees that their union activities were under surveillance by Respondent;

(2) threatened its employees with unspecified reprisals by telling its employees the Union will hurt them;

(3) threatened its employees with unspecified reprisals by telling employees the Union will hurt everybody in the future;

(4) by telling its employees that through collective bargaining, Respondent does not have to agree to anything, informed employees that it would be futile for them to select the Union as their bargaining representative.

(u) About April 29, 2015, Respondent, by Joe Remblance, at Respondent's facility:

(1) interrogated its employees about their union membership, activities, and sympathies; and

(2) by watching its employees talk with each other during non-working time and immediately asking them what they were discussing, engaged in surveillance of employees engaged in union activities.

(v) About May 1, 2015, Respondent, by David Garcia, at Respondent's facility:

(1) by searching through the personal belongings of its employees, engaged in surveillance of its employees engaged in union activities;

(2) created the impression among its employees that their union activities were under surveillance by:

(A) telling its employees that Respondent knew that employees handed a union card to another employee in the South End break room at Respondent's facility; and

(B) informing its employees that Respondent was looking for union cards.

(3) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if its employees refrained from union organizational activity.

(w) About May 5, 2015, Respondent, by Engdahl and Vaivao, at Respondent's facility:

(1) threatened its employees with unspecified reprisals, by telling its employees that discussions and heckling related to the Union would not be tolerated;

(2) by telling its employees that Respondent knew that there were problems on the floor, created the impression among its employees that their union activities were under surveillance by Respondent; and

(3) promulgated an overly-broad and discriminatory rule that heckling, insulting or potential slow-down by its employees who did not share a similar point of view would not be tolerated in response to its employees' organizing activities.

(x) About May 8, 2015, Respondent, by a letter issued to its employees from Kent McClelland:

(1) promulgated and has since maintained an overly-broad and discriminatory rule prohibiting its employees from engaging in unlawfully coercive behavior or bullying, in response to employees' organizing activities;

(2) asked its employees to ascertain and disclose to Respondent the union membership, activities, and sympathies of other employees, by telling its employees to report co-workers who violate the rule described above in paragraph 5(x)(1); and

(3) threatened its employees with legal prosecution if they violate the rule as described above in paragraph 5(x)(1).

(y) About May 25, 2015, Respondent, by Karen Garzon (Garzon), at Respondent's facility:

(1) interrogated its employees about their union membership, activities, and sympathies; and

(2) by removing Union flyers from non-work areas while permitting other non-work related literature to remain in non-work areas, selectively and disparately enforced Respondent's overly-broad and discriminatory no-solicitation/no-distribution rule.

(z) About May 29, 2015, Respondent, by Vaivao, at Respondent's facility, by increasing the wage rate to certain of its employees, granted benefits to its employees to dissuade its employees from supporting or voting for the Union.

(aa) About June 15, 16, 17 and July 8, 2015, Respondent, by Garzon, at Respondent's facility, by removing Union flyers from non-work areas while permitting other non-work related literature to remain in non-work areas, selectively and disparately enforced Respondent's overly-broad and discriminatory no-solicitation/no-distribution rule.

6. (a) About May 5, 2015, Respondent disciplined its employee Mario Lerma (Lerma).

(b) Respondent engaged in the conduct described above in paragraph 6(a) because Lerma assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

7. By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8. By the conduct described above in paragraph 6, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraphs 5 through 6, the General Counsel seeks an Order requiring that the Notice be read to employees during working time by Kent McClelland, in both English and Spanish and with a sign language interpreter. Alternatively, the General Counsel seeks an order requiring that Respondent have a Board agent read the notice to employees during worktime in the presence of Respondent's supervisors and/or agents identified above in paragraph 4.

As part of the remedy for the unfair labor practices alleged above in paragraphs 5(p) and 5(q), the General Counsel seeks an order requiring that Respondent reimburse discriminatee(s) for all search-for-work and work-related expenses regardless of whether the discriminatee(s) received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before August 4, 2015, or postmarked on or before August 3, 2015.** Respondent should file the original copy of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile

transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on September 8, 2015, 1:00 p.m. the Hearing Room, National Labor Relations Board, 2600 North Central Avenue, Suite 1400, Phoenix, Arizona, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 21st day of July 2015.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

SHAMROCK FOODS COMPANY

and

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS' AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL
UNION NO. 232, AFL-CIO-CLC**

Case 28-CA-150157

**AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing
(with forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 21, 2015, I served the above-entitled document(s) by certified mail, as noted below, upon the following persons, addressed to them at the following addresses:

Shamrock Foods Company
2228 North Black Canyon Highway
Phoenix, AZ 85009-2791
7012 3460 0000 6458 6659

Jay Krupin, Attorney at Law
Baker & Hostetler LLP
1050 Connecticut Avenue NW, Suite 1100
Washington, DC 20036

Nancy Inesta, Attorney at Law
Baker & Hostetler LLP
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025

Bakery, Confectionery, Tobacco Workers'
and Grain Millers International Union, Local
Union No. 232, AFL-CIO-CLC
3117 North 16th Street, Suite 220
Phoenix, AZ 85016-7679

David A. Rosenfeld , Attorney at Law
Weinberg Roger and Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

July 21, 2015

Date

Kay Davis, Designated Agent of NLRB

Name

/s/ Kay Davis

Signature

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 28-CA-150157

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Shamrock Foods Company
2228 North Black Canyon Highway
Phoenix, AZ 85009-2791

Jay Krupin, Attorney at Law
Baker & Hostetler LLP
1050 Connecticut Avenue NW, Suite 1100
Washington, DC 20036

Nancy Inesta, Attorney at Law
Baker & Hostetler LLP
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025

Bakery, Confectionery, Tobacco Workers'
and Grain Millers International Union, Local
Union No. 232, AFL-CIO-CLC
3117 North 16th Street, Suite 220
Phoenix, AZ 85016-7679

David A. Rosenfeld, Attorney at Law
Weinberg Roger and Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Excerpt 9

PX 25

FORM NLRB-5168
(2-08)

Case 28-CA-150157
Steven Phipps affidavit

Shamrock Foods and Shamrock Farms Dairy Division

Confidential Witness Affidavit

I, Steven Phipps, being first duly sworn upon my oath, do hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 4065 E. Blue Ridge Place, Chandler, AZ 85249.


My mobile number is 602-577-7608.

My e-mail address is, sshipps51@gmail.com

I am employed by Shamrock Foods Company, the correct name of the Employer, which is located at 2228 N. Black Canyon Highway, Phoenix, AZ 85009, telephone number 602-272-6721. I work at the warehouse distribution center location of 2450 N. 29th Avenue, Phoenix, AZ 85009. The employer is engaged in the business of distribution of food and dairy products. The employer is a nationwide company with several locations in Arizona, with other locations in New Mexico, Southern California, Denver, Colorado, Oregon, Virginia, and Texas.

1 I was hired by the employer on 9/29/1996 as a general warehouse loader. My current position is
2 forklift driver, which is still called a general warehouse employee. My duties include restocking pick-
3 slots, putting away pallets of delivered products, and any other duties as assigned. I work 40 hours a
4 week, working Sunday through Wednesdays, and then on Fridays. I work first shift for forklift
5 employees, from 6:00 a.m. until 2:30 p.m. My pay rate is \$12.00 per hour base rate plus incentives of
6 \$2.00 per hour more for forklift driving; \$1.50 per hour for perfect safety and attendance, and monies
7 based on number of tasks performed each hour, which I replenish and/or put away pallets at a rate of

PRIVACY ACT STATEMENT

Page 1 of 53  Initials

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine used for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further an unfair labor practice or representation case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

1 Then the next meeting to organize employees was held on 1/24/15, at the union hall. I was
2 present with Anderson, Wizner and some employees whose names I have provided to the Board Agent.
3 We discussed with them getting a union in at work. Some of these employees signed a card and I can
4 authenticate some of the employees' signatures on the cards.

5 Then on 1/25/15, I went to work and ran into Zack White, a day shift Floor Captain in Systems
6 shipping. He told me that there was union activity in California and asked me if I had heard about it or
7 knew anything about it. I said I only knew what the rumors were saying, which was that there is activity
8 in California. I actually knew what the union activity was as I had asked a Transportation Manager,
9 Robert ???, between 1/14/15 and 1/25/15, a more specific date I cannot recall and asked him if it was
10 true about the union activity going on in California. He told me that the Teamsters were standing at the
11 gates and handing signature cards to the drivers) White told me there were rumors in the warehouse
12 about an organizing campaign. I asked him if he knew anything about it because I didn't want the
13 teamsters in the warehouse. He told me no, he didn't know anything, but he had heard that whoever was
14 involved was really close to getting the union in. He asked me if I knew anything about that. I said I
15 had done some studying to protect myself after the last unionizing attempt 17 years ago, and that was
16 when Vinny and Luigi got fired for engaging in union activity. I told him I wanted to protect myself and
17 knew what my rights were. That was the end of the conversation. It is common knowledge that Zack
18 White reports everything he sees in the warehouse to supervisor Jake Myers, the day-systems shipping
19 supervisor known to be extremely anti-union. Art Manning, another Floor Captain, on a date I cannot
20 recall, has told me directly to be careful of Zack White because White tells Myers everything that goes
21 on in the warehouse and Myers was really anti-union. Both Manning and White are Floor Captains.

22 Then on 1/28/15, the employer held a mandatory town hall meeting for all morning warehouse
23 employees and managers. This meeting was held at 9:00 a.m. in auditoriums 1, 2, and 3. Present for

1 else thinks, that he understands you are doing it for your own personal reasons. He said a lot of stuff was
2 being said that was wrong and he was going to call what was bullshit, bullshit. He said the union will
3 hurt Shamrock, it will hurt all of you. He said it will hurt everybody in the future, and this was all in his
4 opinion. He said he had been a Teamster for seven years and knew the union inside and out and he
5 could tell us it was not good for us at Shamrock, that he could tell us that. He said, what do you all think
6 would happen if we got a union contract. In his opinion do you think the union would negotiate a better
7 contract for you than another shop in town; how would they explain that. The union would be crazy to
8 give you a better contract than Sysco and U.S. Foods. He said Arizona is a right-to-work State. He said
9 one of you is thinking because it is a right-to-work State you can opt out of paying dues and you would
10 be right. But you would be covered by whatever is negotiated. There are no guarantees about bargaining.
11 No one can tell you that you will have more or less. Shamrock sets working conditions and pays benefits
12 and wages; not the union. The only thing the union can do is come to us and ask for things. The
13 employer doesn't have to agree to anything. He said again with emphasis, ANYTHING. NOTHING,
14 other than what the employer wants to. It's bargaining. He said bargaining can go on forever. It's
15 collective bargaining and all you have to do is bargain in good faith. These are facts that people will not
16 tell you and he wanted us to hear them.

17 Also on 4/29/15, during my break about 1:00 p.m., Safety Manager Joe Remblance, who is not in
18 my supervisory chain, came from the other end of the aisle to come up to me on aisle 49, after seeing
19 that I was talking with Nile Bose. Aisles are about 50-75 yards long. Remblance asked us what we
20 were talking about. We told him about work. Then he asked us if we were on break. We told him yes,
21 we were on break. Remblance didn't leave and instead remained talking small talk with us. As and
22 Remblance left he asked me how much more time did I have on my break. I said a couple more
23 minutes. He said be sure to get back to work. Remblance had never before asked me if I was on break,

1 he didn't care, as I was not in his chain of command. Remblance has come up to me in the past when I
2 was talking to other employees and joined in conversations I was having with other employees, but he
3 has never come up to me to break up a conversation between myself and another employee or to ask if I
4 was on break or not.

5 Then after work on 4/29/15, Manning called me at home. Manning said about the same things to
6 me that he said earlier that day. He told me if I wasn't so closed minded and were open, and go talk to
7 these guys, we could settle this thing. He asked me what I wanted. I told him that I was tired of talking,
8 that management says they will do something but never do it—all talk no action. Manning told me I
9 needed to go to upper management, and talk to them. I just told him, we were over a hundred strong and
10 if management wants to talk to me they can come talk to me, but that we're coming; we're coming.

11 Then on 5/1/15, I got a text from a employee lead organizer, whose name I have provided to the
12 Board Agent, telling me that he caught his supervisor, going through his personal property clipboard and
13 that the supervisor admitted to this employee that he was told by management to search this employee's
14 clipboard to see if this employee had union cards with him.

15 On 5/3/15, I had an employee, whose name I have given to the Board Agent, text me and tell me
16 that on 5/1/15, as he arrived at work that day, he ran into Jerry Kropman and asked Kropman how he
17 was doing. Kropman said, "these people are driving him fucking crazy trying to get this union in
18 here. .fuck them all in the ass."

19 On 5/6/15, Manning had the same conversation in aisle 69 that we had on 4/29/15, except that
20 Manning said that I should back off this union push for three weeks and see what management did. I
21 asked him if he had had that meeting with upper management that he said he was going to have and he
22 said no. At that point, I saw Safety Manager Joe Remblance, walk across the other end of the warehouse
23 to walk up to Manning and me, and ask us what we were talking about. Then he asked me if I was on

1 Kent and Norm McClelland, as it was Kent who distributed the letter to employees about not tolerating
2 employees harassing other employees after the union campaign started. I know it was Mark Engdahl
3 also that threatened Mario Lerma to stop harassing employees or he would be in serious trouble. As far
4 as warnings issued and discharges being committed in a manner to intimidate other employees, all I can
5 say is that employees fear for their jobs after the employer walked out three employees in two days on
6 5/13/15 and 5/14/15. Two of those employees were card signers and actively attended union meetings.
7 Ivan Vaivao told us employees in several meetings that the employer knew who the organizers were and
8 knew who attended meetings, and that was said to intimidate us. The discharged employees were not
9 perceived as leaders of the organizing campaign by other employees but Lerma, who was told by
10 Engdahl to back off or be in serious trouble is perceived to be a leader of the organizing campaign by
11 other employees. As far as the discharged employees being willing to resume the campaign if they are
12 reinstated, I think Wallace, Scott and Perez would definitely resume the campaign. I don't know about
13 Victor Martinez resuming the campaign. Currently the employer's conduct is not blocking a
14 representation case or election as the Union has not filed a petition yet. The union is more than willing
15 to revive the campaign and/or proceed to an election if court orders injunctive relief. There is no
16 scattering of employees to the four winds, and three of the four discharged employees desire
17 reinstatement.

18 Since Wallace's discharge the union has held two union meetings, one on 4/25/15, and another
19 on 5/19/15. The meeting on 4/25/15, was held at the union hall at 1:00 p.m. and about 20 people
20 showed up. Only two of the employees were new attendees, with the rest of the attendees all previous
21 card signers. The two new attendees signed cards. The meeting on 5/19/15, was held at Denny's at
22 6:30 p.m. and only five previous card signers showed up. Prior to the discharge of Wallace, we
23 averaged about 4.7 cards signed a week. We got only four cards signed in the last 30 days. Since

Page 52 of 53  Initials

1 Wallace's discharge it's been harder to get anyone to sign cards. Attendance at the union meetings has
 2 dropped and been attended by people who already signed cards. No one has asked for their card back.
 3 The campaign is pretty much stalled right now due to the employer's constant efforts to interrogate
 4 employees about if we are for or against the union and the fact that supervisors are constantly
 5 surveilling us. Employees are avoiding being seen with me or talking to me. Prior to the discharges
 6 employees used to talk to me all the time. But since last week's discharges of three employees,
 7 employees have really pulled back and are scared to be seen with me for fear of losing their jobs.

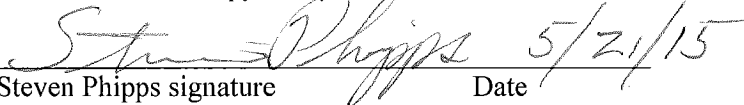
8 With regard to what languages employees speak and read at work, the majority speak and read
 9 English.

I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

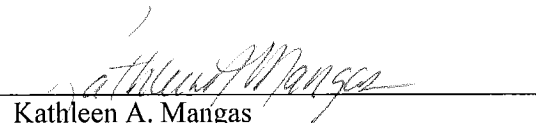
I have read this statement consisting of 53 pages, including this page; I fully understand its contents and I certify under penalty of perjury that the foregoing is true and correct.


 Steven Phipps signature Date

I have received a copy of my affidavit.


 Steven Phipps signature Date

Subscribed and Sworn to before me at
 Phoenix, Arizona
 this 21st day of May 2015


 Kathleen A. Mangas
 Board Agent
 National Labor Relations Board

Excerpt 10

PX 26

Shamrock Foods and Shamrock Farms Dairy Division

Supplemental Confidential Witness Affidavit

I, Steven Phipps, being first duly sworn upon my oath, do hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

All my contact information I provided in my initial affidavit is still current.

1 This supplemental affidavit is given to provide evidence with regard to the Employer's
2 continuing conduct.

3 Around 5/22/15, the employer posted more anti-union flyers behind the glass of its bulletin
4 boards in the warehouse, of which there are now about five or six Employer bulletin boards located
5 throughout the warehouse. The employer installed new bulletin boards in all of its break rooms about 30
6 days ago, a more exact date I cannot recall. One of the flyers behind the glass bulletin board stated the
7 following:

8 **"SO YOU WERE FOOLED INTO SIGNING A UNION CARD AND NOW WANT IT**
9 **BACK.** We have heard that some associates say they were fooled, pressured or coerced into
10 sign a union card and now want it back. Here's the story: Asking the union to give you a card
11 back is usually pointless. They do not respect you enough to listen to you. Just try it and see
12 what happens. Since they won't respect you now, imagine what it would be like after they had
13 your money deducted right out of your paycheck for dues. But all is not lost. Here's what to do:
14 Tell other associates NOT to sign cards. Remind other associates that signing a card does NOT
15 mean there is a union. It only provides for an election. If you signed a card, you do NOT have to
16 vote the union in. During a secret ballot election, you would vote "NO". **Don't fool around**
17 **with your paycheck, your family's future, and your job. Say "NO" to this union."**

18
19 A second flyer stated the following:

20
21 **"FACT OR FICTION???**
22 **Future of 401(k)**

PRIVACY ACT STATEMENT

Page 1 of 9  Initials

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine used for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further an unfair labor practice or representation case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

1 of command. I looked around and saw Remblance standing about five feet away. He had yelled so
2 loudly that no one could hear what I was saying, completely interrupting what I was saying to these
3 employees and injecting himself into our private conversation about union matters. I did not see him
4 enter and do not know how long he stood nearby as I was answering the questions these employees
5 posed about the union. Not one employee answered Remblance. I have never before heard Remblance
6 asking employees in a lunch room on break, how they were doing or how their lunch was. Remblance
7 then went to the refrigerator and grabbed a bottle of water, coming to within about four feet from the
8 table. I asked him what he was doing. Remblance said he was just asking them how their lunch was and
9 how they were doing. I said no, he was not. He said yes, he was. I said what he [Remblance] just did
10 was unlawful, according to the Act. I told Remblance that he just needed to shut up and go away. At
11 that point Remblance turned around and walked out of the break room. I then turned to the employees
12 and told them that what he [Remblance] was doing was called cooling (chilling) and it was meant to be
13 intimidating so that they wouldn't listen to what I was saying about the union. After that I answered a
14 few more questions the employees had about the union and turned around to leave the break room. I
15 then saw that another employee had entered the room and I handed him a handbill. I then noticed that
16 Karen Garzon, whose title is the Sanitation Supervisor, picked up two of the handbills I had handed out
17 to three employees sitting at a table together, earlier. Garzon picked the handbills up off the table, from
18 between the arms of these employees, who were either reading the handbills or looking down at them. I
19 have provided the name of one of these employees to the Board Agent. I heard Garzon say to these
20 employees that they didn't need them. I went over to their table and told the employees that what
21 Garzon was doing was a violation of the National Labor Relations Act, and that they didn't have to let
22 her take them. Garzon looked at me and said, oh, then asked the employees "you don't want these do
23 you?" No one answered her, but the two employees she had taken the handbills from shook their heads.

Excerpt 11

PX 27

Shamrock Foods Company
Case 28-CA-150157

Confidential Witness Affidavit

I, Steven Phipps, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 4065 E. Blue Ridge Place, Chandler, AZ 85249.

My cell phone number (including area code) is 602-577-7608.

My e-mail address is sphipps51@gmail.com

I am employed by Shamrock Foods Company (the Employer)

located at 2228 N. Black Canyon Highway, Phoenix, AZ 85009.

1. I have been employed by the Employer for almost 20 years, beginning in 1996. I have been a volunteer organizer for the Bakery, Confectionary, Tobacco Workers' and Grain Millers International Union, Local Union No. 232, AFL-CIO-CLC (the Union) since I first contacted the Union in about November 2014.
2. As noted in my previous statements given for this matter, I have been actively involved in collecting authorization cards for the Union and can authenticate many of the signed cards.
3. At the height of the organizing drive, the Union collected over 30 cards a month.
4. The momentum began to drop off significantly after the Employer started conducting its roundtable meetings and after Wallace was discharged in the beginning of April. From May through August, the Union collected an average of less than four cards per month, about 15 total.
5. Currently the Union has about 107 cards, not including cards from employees that no longer work for the Employer.

////////////////////////////////////
 //////////////////////////////////////
 //////////////////////////////////////

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 2 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: August 31, 2015

Signature:

Steven Phipps 8/31/15
 Steven Phipps

Signed and sworn to before me on August 31, 2015 at Phoenix, AZ

Sara Demirok

Sara Demirok

Board Agent

National Labor Relations Board

Excerpt 12

PX 28

FORM NLRB-5168
(2-08)Case 28-CA-150157
Thomas Lee Wallace affidavit

~~Charge Name~~
Shamrock Foods - TW
Confidential Witness Affidavit

I, Thomas Lee Wallace, being first duly sworn upon my oath, do hereby state as follows:

I have been given assurances by an agent of the National Labor Relations Board that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the Board and will not be disclosed unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 14967 N. 137th Lane, Surprise, AZ 85379.

My phone number 623-271-7530. My mobile number is 623-225-4369.

My e-mail address is, thomaswallace01@yahoo.com

I am represented by Michael Wizner, a Representative from Bakery, Confectionery, Tobacco Worker's and Grain Millers International Union, Local Union No. 232, AFL-CIO, CLC (Union) who I have agreed to have present for this interview.

I was employed by Shamrock Foods Company located at 2228 N. Black Canyon Highway, Phoenix, AZ 85009, telephone number 602-272-6721. I worked at the distribution center location of 2450 N. 29th Avenue, Phoenix, AZ 85009. The employer is engaged in the business of distribution of food and dairy products.

- 1 I was hired by the employer on 5/8/2008 as a warehouse loader which is still my current position.
- 2 My duties included loading trucks for route delivery, loading cases into trailers for route delivery,
- 3 cleaning docks and general duties as assigned. I worked 40 hours a week, working Sunday through
- 4 Wednesdays, and then on Fridays. I worked the day shift from 9:00 a.m. to 6:00 or 7:00 p.m. My pay
- 5 rate was \$26.00 per hour. I was eligible for overtime and averaged about 1-3 hours of overtime a week.
- 6 My immediate supervisor was Jake Myers, whose title was just supervisor. His supervisor is Armando

Page 1 of 13 TW Initials

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine used for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further an unfair labor practice or representation case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

1 did not know, also raised their hands and asked questions and I do not recall what they were or what
2 Endenthall answered. This meeting lasted about an hour. All of us employees went back to our work
3 areas and we discussed while we were working about how the video made it look like the employer was
4 afraid of a union coming in.

5 Then later that day my supervisor, Jake Myers, came to my work area loading door, between
6 12:00 p.m. and 1:00 p.m. No one else was present. Myers asked me so what did I think about the union.
7 I told him hey, I didn't know about the union as I was going to do my research. I said from the people
8 that I had talked to like my Dad and my neighbor and a Cisco driver that they all said the benefits are
9 better and the union is better for the people. Myers shook his head and said yeah, looking like he agreed
10 with me.

11 Then on a date I cannot recall, Steve Phips told me to look out for what I said around Warehouse
12 Captains, our foremen/lead, employees, as they were looking for people that are involved in the union or
13 talking about the union. He said he just wanted to warn me about talking to Art Manning or any
14 supervisors about the union and to watch my butt.

15 I first knew about the Union organizing campaign about the first of February 2015 after the
16 employer showed the anti-union video. Since that time I was told by union representative Wizner that
17 the union began its organizing campaign around November 2014.

18 Then on a date I cannot recall, one of my co-workers, Miguel Lopez, told me and Jose Soto
19 while we all were in the parking lot, that some of the employees were thinking about getting a union in
20 at work. Lopez said that some other co-workers were going to meet at the office to talk about union
21 organizing. He didn't tell me what he meant by the office and I didn't get clarification. I do know that
22 all of us employees have been complaining for a while about how the employer deducts from employee
23 paychecks any damages the employer asserts employees cause to products being loaded. The employer

1 also charges employees for shorts, meaning if a case has 100 cans that are supposed to be in the box, and
2 once the product is delivered and there are only 95 cans in the case, loading employees are charged for
3 the difference. With regard to damage, if I load a \$30 pound bag of flour into a truck and the bag
4 breaks, the employer deducts the destruction of the product from my next paycheck and charges me \$60.
5 I have had weeks where I had no knowledge of having caused any damage, yet found deductions in my
6 paycheck for alleged damage. What happens is that after a driver delivers the product and returns to the
7 dock, and he asserted that he could not deliver certain products because they were crushed or otherwise
8 damaged, then that product is coded into a computer system as a returned stock, and then is somehow
9 reported to supervisors and loading employees are charged. Drivers are not charged for any damages.
10 Then the employer also charges shorts and damages inconsistently. For example if a supervisor has a
11 favored employee who showed the supervisor that a deduction for damage or short was made on their
12 paycheck, and complains to the supervisor that they didn't cause the damage, the supervisor removes the
13 deduction and the employee is reimbursed the damage cost in their next paycheck. Those favored
14 employees are usually, Able Lemus, Victor Gonzales, Richard Sanchez and ??? Luna. These employees
15 never complain about anything at work. I have been told by Julian Magliano and Richard Sanchez, that
16 these three employees also have also told them that they will not sign union representation cards.

17 After February 1, 2015, I heard a lot of chatter from my co-workers about getting a union in and
18 then Miguel Lopez told me there was a union meeting being held after work at Denny's restaurant,
19 located on I-17 and Thomas Road around 2/3/15, at 6:00 p.m. I am not certain of the date. I attended
20 this meeting arriving around 6:30 p.m or 7:00 p.m. Present at this meeting for the Union were Michael
21 Wizner, the Union Business Agent, and Eric Anderson. Present for employees were myself Joel
22 Rodriguez, Steve Phips, and another employee whose name I do not know. We all discussed the union
23 organizing campaign, the process and how it worked. I signed a union representation card as did Joel

1 and the other employee whose name I don't know. I didn't see Steve sign a card. At that time I agreed
2 to be part of the campaign. I did not get any cards to hand out to employees. I then went home and did
3 internet research on organizing and found out what I could and could not do and found out it was
4 unlawful for the employer to ask employees about their union sentiments. This meeting lasted about 45-
5 60 minutes. I left around 7:30 p.m. I was pulling away from the restaurant in my car and saw Art
6 Manning's red-truck. Manning is the Warehouse Captain. As a warehouse captain has authority to give
7 employees instruction as to when employees take breaks, how to complete job duties, let's us know
8 when we can leave at the end of shift, tells us what to clean on the docks. He has the owner's phone
9 numbers in his cell phone because he showed me those phone numbers. Manning reports directly to
10 Jake. As I pulled out I called Miguel Lopez and asked if he was going to Denny's. He said he just
11 arrived at Denny's and was in the parking lot and saw Art's truck in the parking lot and saw Art go in,
12 so wasn't going into Denny's with Art there. Miguel said he was not going in because he was afraid Art
13 would say something to upper management.

14 The next day I went back to work and during break, while in the break room area located
15 downstairs, several employees and myself began talking about the union coming in and if the employer
16 was going to find out about it or not. Miguel and some of the other employees said they were spooked
17 about seeing Art at Denny's so we all were careful to keep our talk very low and we kept ourselves
18 separate from other employees we knew were pro-employer. There is an Employer camera placed at the
19 entrance into the break room. I don't know if it's audio and visual. I only know it has video, because I
20 have seen the video feed in the control room which shows a camera that is pointed to the entrance of the
21 break room, and of course the control room shows points at several locations throughout the building.
22 No one said anything about wanting to stop organizing though.

Excerpt 13

PX 51

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 9, 2015

Pages: 49 through 196

Volume: 2

OFFICIAL REPORTERS

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Ivan Vaivao	135				

1 from all departments, not necessarily just the warehouse.

2 Q Okay. And some employees asked questions during the
3 meeting, didn't they?

4 A Yes.

5 Q And this is the meeting where -- in which you referred to
6 when we talked about Mr. Wallace getting fired, right?

7 A This is the meeting Mr. Wallace attended, yes.

8 Q And employees ask questions towards the end of the
9 meeting, right?

10 A Correct.

11 Q Because there was a question and answer session, right?

12 A There's a question and answer. There's questions in
13 between the meeting. So it wasn't -- there were questions in
14 between the meetings, but most of the questions were asked
15 towards the end of the --

16 Q And former employee Thomas Wallace, he asked a couple of
17 questions, didn't he?

18 A Yes.

19 Q And those questions were related to health benefits,
20 right?

21 A Yes.

22 Q And other employees reacted when he asked his first
23 question, didn't they?

24 A Yes, the employees reacted.

25 Q But Mr. Beake answered his questions, didn't he?

1 A He did.

2 Q And Mr. Wallace wasn't the only one who asked questions;
3 is that right?

4 A Mr. Wallace wasn't the only one asking questions.

5 Q Now when you said that he was -- correct me if I get this
6 wrong. But I thought you testified that he was rude and
7 disrespectful during that meeting.

8 A Yes.

9 Q Was it his tone of voice that was rude?

10 A He was -- he would get agitated. Not necessarily
11 disrespect. The disrespect piece is that he stormed out after
12 that. He walked out of the room. That was the -- I think that
13 was the disrespect piece for me. He did continue on after Mr.
14 Beake had continued. So Mr. Wallace kept on -- you know, kept
15 on, you know, with his questions or --

16 Q Well, he asked two questions, didn't he?

17 A I'm not sure of the number of questions, but I know he
18 said -- I know he's continued on after -- after his initial
19 questions, he continued on. And then he got up and stormed
20 out.

21 Q You were there?

22 A I was there. I saw that.

23 Q You saw that?

24 A I saw it, yes. I saw that he walked out. I know that.

25 Q But other people left that meeting early, didn't they?

1 A I don't think so, no.

2 Q But you weren't monitoring the door, were you?

3 A I wasn't monitoring the door, no.

4 Q In fact, you were preoccupied with the interpreter?

5 A No. The interpreter came already. At the beginning of
6 the meeting, the interpreter came. But after that, I was right
7 there in the middle. Questions or answers, you know, towards -
8 - after everything was presented. So, at that time, I was just
9 there. I was --

10 Q And you --

11 A -- present.

12 Q You were in the middle, right?

13 A I was roughly around the middle to the front part.

14 Q Near the front?

15 A Yeah, near the front. The door is -- there's a door in
16 the front. There's a door in the middle and a door in the
17 rear. I was more in between the front and the middle door.

18 Q And he was near the rear, right?

19 A He was not completely to the rear but right adjacent to
20 the door, to the rear door, yes.

21 (Counsel confer)

22 MS. DEMIROK: Okay. Your Honor, I think this would be a
23 good time to stop.

24 JUDGE WEDEKIND: Okay. All right. 9:00?

25 MS. DEMIROK: 9:00.

Excerpt 14

PX 52

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD
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Case No. 28-CA-150157

and

Bakery, Confectionary,
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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Ivan Vaivao	207	325			

1 (Off the record at 9:59 a.m.)

2 Q BY MS. DEMIROK: Mr. Vaivao, I want to talk about an
3 incident that took place on May 5th, 2015. You met with an
4 employee in Mr. Engdahl's office; didn't you?

5 A Yes.

6 Q Who was that employee?

7 A Mario Lerma.

8 Q And you stayed for the duration of that meeting; didn't
9 you?

10 A Yes.

11 Q And other than yourself, Mr. Engdahl and Mr. Lerma, was
12 anyone else present?

13 A No.

14 Q And Mr. Engdahl did most of the talking during this
15 meeting, too, didn't he?

16 A He did all the talking, yes.

17 Q He did all the talking?

18 A He did all the talking. I don't remember me saying
19 anything.

20 Q You didn't say a word?

21 A I don't remember me talking in that meeting. It was more
22 Mark Engdahl wanted to communicate with Mario Lerma.

23 Q And the reason why he wanted to communicate with Mr. Lerma
24 was because he heard some rumblings on the warehouse floor;
25 isn't that true?

1 A The reason why is because associates were reporting to
2 Mark Engdahl that there's some heckling, there's a pen throwing
3 incident and there was concerns that fork lifters weren't
4 making -- doing their work. Essentially affecting operations.
5 And there is -- Mr. Lerma apparently had mentioned that there
6 was some tasks that -- management were deleting tasks. So Mark
7 Engdahl wanted to make sure that hey, A) operationally we're
8 not being affected by not completing -- by not doing the tasks
9 and management are not deleting tasks.

10 Q But what he told Mr. Lerma was that the reason he was
11 there was because he heard some rumblings on the warehouse
12 floor; isn't that right?

13 A Those were the rumblings, yes.

14 Q And that's what he told Mr. Lerma, right?

15 A That's what he told Mr. --

16 Q Just that there were some rumblings on the warehouse
17 floor?

18 A He told -- he explained to him that there's heckling going
19 on in the warehouse. There is associate pen throwing that
20 involved Mr. Lerma's name, circled Mr. Lerma's name. That
21 associates -- other -- that certain associates -- the drops
22 weren't made for certain associates, which affecting our
23 operation and Mr. Lerma had mentioned to associates that
24 management were deleting tasks. So he wanted to make sure that
25 A) our operation is not affected by it and B) if management is

1 doing something wrong, he needed to know that. That was his
2 job.

3 Q Right, so Mr. Engdahl said that there was heckling going
4 on, right?

5 A Yes.

6 Q He said that there was insulting going on; is that right?

7 A There was some pen throwing, yes. I'm not that he
8 mentioned insulting --

9 Q Insulting, right?

10 A But there was some pen throwing. Fork lifters were
11 throwing pens at, you know, at pickers that, you know, refused
12 to sign.

13 Q But he didn't tell Mr. Lerma that; did he?

14 A He told him that.

15 Q In this meeting?

16 A In this meeting. He mentioned all those things to him.

17 Q And he also mentioned that there was a potential slowdown
18 on certain folks who didn't share Mr. Lerma's certain point of
19 view; is that right?

20 A That was the operational slowdown. It was certain
21 associates weren't getting their drops because of the knowledge
22 that hey, those guys don't want to sign for the Union.

23 JUDGE WEDEKIND: Did he say that?

24 THE WITNESS: He said that, yep.

25 Q BY MS. DEMIROK: So he actually explained what this

1 potential slowdown was; is that what you're saying?

2 A Yes.

3 Q And Mr. Engdahl, he told Mr. Lerma that this was just kind
4 of a heads up, right?

5 A Yes, to let him know -- does he know what the impact is?
6 The impact was impacting our operation. He wanted to make sure
7 that Lerma knew that that was an impact to the operation and
8 then he wanted Mr. Lerma to understand that the comment about
9 management deleting tasks, he wanted to know that, so that way
10 he can look into if we were doing something wrong. So the
11 reason I was there is because of that. That specific reason.

12 Q Because you actually had a conversation with Mr. Lerma
13 about a week prior to that; didn't you?

14 A I had a conversation about deleting tasks and he knew
15 exactly when I sat down with him, he said yes, I didn't say
16 management is deleting tasks. I said tasks are being deleted.

17 Q And you told him to stop spreading the rumors, right?

18 A No, I didn't tell him to stop spreading rumors.

19 Q Well, let's go back to this May 5th meeting. Mr. Engdahl
20 said that he just wanted Mr. Lerma to take note and stay out of
21 trouble. Is that right?

22 A I don't remember him saying -- tell him that. It was a
23 casual conversation to let Mr. Lerma -- that his name came up a
24 lot, to make sure that hey, he's not doing that. There was
25 concerns as Mark walks through, an associate would approach

1 Mark.

2 Q And Mark told him that the heckling would not be
3 tolerated; is that right?

4 A Harassment would not be tolerated. Mark told him that
5 hey, any kind of harassment in the warehouse is not tolerated.

6 Q But he said heckling, not harassment, right?

7 A He said harassment, I know that. We have a no harassment
8 policy.

9 Q So he never said that heckling would not be tolerated?

10 A Not sure if those were the exact words, but I know what he
11 said was any kind of harassment on the floor is not tolerated.

12 Q And he told Mr. Lerma that insults wouldn't be tolerated
13 either, right?

14 A As far as insults, I haven't heard that word, insults. It
15 was more the pen throwing incident.

16 Q So he said throwing pens, it won't be tolerated; is that
17 right?

18 A No, he didn't say throwing pens wasn't tolerated. He said
19 harassment on the floor is not tolerated.

20 Q And he was referring to the pen throwing incident?

21 A He was referring to the pen throwing, anything that went
22 on is considered as harassment.

23 Q And as you testified before, he explained what the
24 harassment was in regards to the pen throwing, right?

25 A He explained the incident that Lerma's name popped up in

1 all those incidents. He explained to Lerma the pen throwing
2 incident, his name brought up that he wasn't doing, you know,
3 the drops for certain individuals. He explained to him that
4 associates came up, mentioning his name saying that management
5 was deleting tasks.

6 Q And Mr. Engdahl told Mr. Lerma that he could get in
7 serious trouble for that, right?

8 A Not that I recall.

9 Q He never said that this whole meeting was to avoid getting
10 in serious trouble?

11 A I don't remember that. I don't remember him telling Lerma
12 to -- this meeting was specifically to avoid him getting in
13 trouble.

14 Q Didn't ever say that?

15 A I don't think he said that.

16 Q Now, Mr. Engdahl wasn't really giving specifics, was he?

17 MR. DAWSON: Objection. It's been asked and answered.

18 JUDGE WEDEKIND: Wasn't giving specifics. About what?

19 And he has testified in pretty good detail.

20 MS. DEMIROK: Okay. Let me ask some follow-up.

21 Q BY MS. DEMIROK: So you testified that Mr. Engdahl, he
22 brought up some specific issues that were going on in the
23 warehouse floor?

24 A Yes.

25 Q So he never said, Mr. Engdahl this is, Mr. Engdahl never

1 said to Mr. Lerma that he was speaking as generically as he
2 could?

3 A I'm not sure that -- I don't remember that. I don't
4 remember that. I knew he told Lerma that his name was around
5 the issue that we brought up. But as far as generic, I don't
6 remember him saying I'm speaking as generic, you know, I don't
7 remember him saying I'm speaking generic.

8 Q And he wouldn't say that if he was giving specific
9 examples, right?

10 MR. DAWSON: Objection. I don't think Mr. --

11 JUDGE WEDEKIND: Sustained. Sustained.

12 Q BY MS. DEMIROK: At one point, Mr. Lerma asked for
13 clarification; didn't he?

14 A I'm not sure he asked for any clarification. Mr. Lerma,
15 they had some -- I don't remember he asked for any kind of
16 clarification. But he said -- I know he said that all I'm
17 going to do is come to work and do my job now because I can't
18 control what other people hear. So that's what I remember Mr.
19 Lerma saying towards the end. He said he didn't do that and,
20 you know, the best thing for him is to just to come to work and
21 do his job and go home. Because he can't control people, you
22 know, thinking one thing.

23 Q Now Mr. Engdahl explained to Mr. Lerma that, you know, he
24 could still express his opinions, right?

25 A I'm not sure he said -- I don't know if he did or not.

1 I'm not sure he did or not. I don't recall.

2 Q Didn't he explain that he could express his opinions, just
3 not in a way that others would perceive it as intimidation?

4 A No, he didn't say that. I don't remember him saying that.

5 Q And at one point, Mr. Engdahl even said that he didn't
6 actually know if Mr. Lerma was intimidating others; is that
7 right?

8 A There's -- I don't think there was intimidation --
9 intimidation was going on. He was very specific on the -- but
10 whether he said Mr. Lerma was intimidating anybody, he didn't
11 say that. Not that I remember. I just know that his name --
12 Mark said that Mario's name came up on these incidents.
13 Associates were saying that hey, Mr. Lerma was saying that
14 management is deleting tasks. So but as far as Mr. Lerma was
15 insulting anybody, no. Or intimidating anybody, no. That I
16 know of.

17 Q So then you never explained what could be perceived as
18 intimidation then; did you?

19 A Can you ask that question again?

20 Q So you never explained what could be perceived as
21 intimidation?

22 A The incident was pen throwing. So if you're throwing pens
23 at an associate, that's -- I mean you can perceive it however
24 you want to do it. But pen throwing, that's unacceptable. You
25 shouldn't be throwing pens at anybody that, you know, that

1 doesn't want to sign a card. That's unacceptable.

2 Q My question was at this meeting, you never explained what
3 could be perceived as intimidation to Mr. Lerma; did you?

4 A I don't -- I'm not sure exactly what -- I mean we had to
5 explain, you know, what was perceived as harassment. Just
6 throwing pens at somebody, that could be perceived as
7 harassment.

8 Q So it's obvious, right?

9 A It's there.

10 Q So you wouldn't have had to --

11 A But we didn't, you know, for to explain what harassment
12 was or what was perceived as, you know, didn't go into that
13 detail. It was more a casual conversation. It was a very
14 casual conversation. There was no -- it was exchanged, but
15 there was no, you know, it was -- there was no loud voices. It
16 was -- Mr. Lerma said his piece, he got up and says, you know,
17 I appreciate it and walked out. But it was not, you know, an
18 exchange -- a heated exchange, Mark scolding him, no. It's not
19 that. It was more a counseling, talking to him.

20 Q It was counseling, right?

21 A It was more him talking to him and letting him know.

22 Q So it was like counseling, right?

23 A I mean that's his job. That's -- Mark is the VP of
24 operations. He looks into these type of things. So if Mario
25 Lerma's name popped up, he wanted to make sure that Mario Lerma

1 understood. Knew. There was an element there that Mario Lerma
2 said that he was very concerned about was management deleting
3 tasks. He wanted to make sure that yes, management -- if
4 management was deleting tasks, he needed to know that because
5 he's ultimately responsible. So he was concerned both ways.

6 Q But he was counseling Mr. Lerma on his conduct, right?

7 A Maybe I said counseling, but no, I mean maybe I did say
8 that, it's counseling, but it was a conversation that he wanted
9 to have with Mr. Lerma. So that way he understands that his
10 name is coming up with all these -- all the complaints from the
11 floor.

12 Q And you started talking about what those complaints coming
13 off the floor were, right?

14 A Talking --

15 Q During this meeting?

16 A I don't remember myself saying anything. I didn't say
17 anything. It was more Mark interacting with Mario Lerma. If
18 there's something that Mark needed to understand about the
19 tasking piece, then I would say something. But I don't think I
20 said anything. It was more Mark communicating back with Mario
21 Lerma and then Mario Lerma communicating to Mark and that was
22 it. It was very quick. It wasn't a long meeting. It was
23 pretty quick.

24 Q So you never told Mr. Lerma that you heard from employees
25 that he was very vocal out on the floor?

1 A I never said that.

2 Q And so then you never said that different employees were
3 coming to you with complaints about Mr. Lerma; is that correct?

4 A Not on that -- it was more Mark -- associates were pushing
5 Mark.

6 Q And so if you didn't tell Mr. Lerma that employees were
7 coming to you with complaints, you wouldn't have told them what
8 those complaints were then, were you -- did you?

9 A I didn't tell Mr. Lerma anything that day I don't think.
10 It was more Mark's -- Mark came to me and said hey, is Mario
11 working and I said he doesn't come in until 2. So okay, I need
12 to meet with him. So that's why I was there. But I didn't say
13 anything to Mr. Lerma.

14 Q Okay. And before Mr. Lerma left the office, Mr. Engdahl
15 told him that he wasn't getting in trouble, right?

16 A I don't remember him saying that. But it wasn't about him
17 getting in trouble or anything. I don't think he mentioned
18 that. I don't think Lerma asked if he was in trouble. I don't
19 think it was about that. Nobody was in trouble.

20 Q So whether or not he was getting in trouble never came up?

21 A He never -- there was never an intent for him to be in
22 trouble. It was not an in trouble type of situation.

23 Q Mr. Engdahl said he explained to Mr. Lerma that he just
24 wanted everyone to get along, right?

25 A I don't remember those exact words, but I'm pretty sure he

1 said something to those regard. But I don't remember those
2 exact words.

3 Q But he explained that, right. He just said, I just want
4 everyone to get along. Maybe not in those words, but was that
5 the gist of it?

6 A I'm pretty sure he did. I'm not sure exactly he told him
7 that.

8 Q Did he tell him that it was just about getting the work
9 done and that's what's important, right?

10 A I think he said -- I don't think he said that. I think he
11 said hey, just come in and do your job. Just come in and do
12 your job. Everybody, you know, has a job to do. Just come in
13 and do your job.

14 Q And Mr. Engdahl also said that he didn't want anything bad
15 happening while Shamrock was going through all this?

16 A No.

17 Q Never said that?

18 A I didn't hear him say that. I don't think he said that.

19 Q And then Mr. Engdahl told Mr. Lerma that he was valuable,
20 right?

21 A Like I said, I don't remember that as well that he was
22 valuable. If he did, I mean I don't remember him telling Mr.
23 Lerma he's valuable. Everybody is. Everybody is on our team
24 is. Everybody plays a critical part on our team. But if
25 you're asking me if I remember that, I don't remember that as

1 well.

2 Q And Mr. Engdahl also said that Shamrock couldn't afford to
3 lose anybody; isn't that right?

4 A I don't know he said that.

5 Q How long did that meeting last?

6 A I don't know. That was a very short meeting. It wasn't a
7 very long meeting.

8 Q And it was just a casual conversation in Mark Engdahl's
9 office?

10 A It was a conversation that Mark Engdahl had with Mario
11 Lerma and I was there. I was present.

12 Q Now Mr. Engdahl, you mentioned before that he's two steps
13 above you in the supervisory train; is that right?

14 A I report to Jerry Kropman and Jerry Kropman reports to
15 Mark Engdahl.

16 Q And what's Mr. Engdahl's title again?

17 A VP of operations.

18 Q Okay.

19 MS. DEMIROK: Your Honor, if we could take a short recess.
20 I just want to figure out exactly what I want to go back over.
21 But I think we've made it through most --

22 JUDGE WEDEKIND: Let's take a bathroom break. Off the
23 record. Five minutes.

24 MS. DEMIROK: That works.

25 JUDGE WEDEKIND: Okay.

Excerpt 15

PX 54

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 14, 2015

Pages: 479 through 702

Volume: 5

OFFICIAL REPORTERS

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Steven Lee Phipps	484	570	631	637	
Thomas Wallace	647	667	696	697	

1 you organize?

2 A Yes, they did.

3 Q Now, I want to draw your attention to January 2015. What,
4 if any, organizing did you participate in that month?

5 A Again, we were still doing one on one meetings. We were
6 starting toward the end of January to branch into a few group
7 meetings, small group meetings, but, again, it was still people
8 that we trusted. It was still people that we knew. We were
9 still in what I would call the first circle.

10 Q And what was the strategy at that point in time?

11 A Again, the strategy was covert. Stay off campus with any
12 organizing, ask people quietly, don't talk to people about what
13 we were doing unless you trusted them, and do it off-site. No
14 cards on-site, no flyers on-site.

15 Q How would you describe the momentum of the campaign at
16 that time?

17 A Very good. It was extremely good. We had a lot of
18 interest, a lot of people started coming to the little group
19 meetings we were having. Everybody was enthusiastic.
20 Everybody wanted to -- that we talked to wanted representation.

21 Q Now, I want to draw your attention to January 25th, 2015.
22 Did you report to work that day?

23 A Yes, I did.

24 Q And could you tell us what happened that day starting with
25 when you got to work?

1 A I clocked in at the -- what they call the Virginia
2 checkpoint, which is where the time clock is. Zack White, the
3 floor captain, also clocked in at the same time. We both
4 walked down aisle 75 to go to the respective areas we were
5 headed to.

6 Zack asked me if I had heard anything about the organizing
7 that was going on in California. He asked me if I knew
8 anything about any organizing inside the Phoenix warehouse. I
9 asked him what he knew, as I didn't want to have the Teamsters
10 in our Phoenix location. He said that he had heard rumors that
11 whoever was organizing was really close to getting the Union
12 into the warehouse.

13 Q And who does Zack White report to?

14 A Zack White generally reports to Jake Myers, who is known
15 to be very anti-union. We knew at that point that Jake was
16 hunting for us.

17 Q And were -- when you had this conversation with Zack White
18 were there any other employees nearby?

19 A No, none.

20 Q And where were you when you had this conversation?

21 A Aisle 75 in the dry.

22 Q Have you ever had a conversation like this with him
23 before?

24 A Never.

25 Q Now, I want to draw your attention to three days later,

1 due diligence just to confirm that.

2 JUDGE WEDEKIND: Got it. Any response? Any further
3 response?

4 MS. DEMIROK: No further response.

5 JUDGE WEDEKIND: Okay. All right. I'm going to admit
6 them just like I did the other ones. But you can always move
7 for reconsideration of that later.

8 MR. DAWSON: Thank you, Your Honor.

9 JUDGE WEDEKIND: Okay.

10 MR. DAWSON: That's, yeah, thank you, Your Honor.

11 JUDGE WEDEKIND: All right. 15(a) and (b) are received.

12 **(General Counsel Exhibit Number 15(a) and 15(b) Received into**
13 **Evidence)**

14 Q BY MS. DEMIROK: Now, Mr. Phipps, we were talking about
15 January 28th, 2015. And you've already testified about the two
16 meetings that you attended. Did anything else happen on that
17 day?

18 A Yes, it did.

19 Q And what was that?

20 A We had an organizing meeting at Denny's. It's on I-17 and
21 Thomas about a quarter mile from the facility.

22 Q And was anyone there from the Union?

23 A Yes, Mike Wizner was there, the business manager, Eric
24 Anderson was there, the Union rep and I showed up at about
25 5:30.

1 Q Did any other employees attend this meeting?

2 A At about 6:30, we started having employees show up and
3 within about 20 minutes, we had five or six show up.

4 Q And how did these employees know about the meeting?

5 A We had gotten word out to committee members and those that
6 we trusted that had already signed cards, told them where the
7 meeting would be, what time it would be. And if they had
8 anybody who wanted to sign a card or anybody that was
9 positively for the Union, to send them over, we'd get their
10 questions answered and allow them to sign a card if they wanted
11 to.

12 Q And you said you were at Denny's. Could you give us an
13 idea of where you were seated in Denny's?

14 A We were in the back at the very back table. That
15 particular Denny's is laid out in a U shape. As you come in
16 the front door, there's tables directly in front of you. The
17 cashier counter is to your right. Bathroom's directly ahead.
18 To your right is the main dining hall. And if you go across
19 that hallway to the next wall and look to your left, there's a
20 group of tables back there that you can't see from the lobby.

21 Q And approximately how long were you at Denny's?

22 A Personally I was there approximately two hours.

23 Q What happened when you were leaving Denny's?

24 A When I was leaving Denny's, I ran into Art Manning and
25 another employee discussing the Union versus the open door

1 policy for Shamrock.

2 Q How did you first learn that Mr. Manning was at Denny's?

3 A I ran into him.

4 Q Did you expect to see him there?

5 A I did not, no.

6 Q And can you describe for us where Mr. Manning was when you
7 saw him?

8 A He was on the handicapped ramp in front of Denny's leaning
9 against -- with his back leaning against a rail. Another
10 employee was talking to him was a step down on the parking lot.

11 Q And this employee that was talking with him, had he been
12 meeting with the Union prior?

13 A He had just signed a card, yes.

14 Q So what did you do when you left Denny's?

15 A I went over to Circle K.

16 Q And why did you do that?

17 A So Art wouldn't see where I was or see the employee I was
18 to meet over there.

19 Q And why were you meeting an employee at Circle K?

20 A I had gotten a call while I was standing there with Art
21 and the other employee and the employee who called me was one
22 of our organizers. He said that an employee had driven into
23 the parking lot, had seen Art, driven away, wanted to sign a
24 card, could I meet them someplace so they could sign it without
25 Art seeing the other employee.

1 would be considered rude and disrespectful and I'm still with
2 the company.

3 MS. DEMIROK: Your Honor, may I take a quick bathroom
4 break?

5 JUDGE WEDEKIND: Sure. Let's take five minutes.

6 MS. DEMIROK: Okay. Thank you.

7 JUDGE WEDEKIND: Off the record.

8 (Off the record at 11:08 a.m.)

9 JUDGE WEDEKIND: Okay. We're back on the record.

10 Q BY MS. DEMIROK: Now, Mr. Phipps, I'm going to draw your
11 attention to the end of April 2015. Did you make any
12 announcements in the warehouse?

13 A Yes, I did.

14 Q And can you tell us about that?

15 A I went into -- I believe it was April 26th, I went into
16 the upstairs break room around lunchtime. Got up, and asked
17 the guys if I could have their attention, made a brief
18 announcement and said, Hey, you may have heard, there's a push
19 for a union; that's true. I'm one of the committee members.
20 I'm organizing. If you have any questions, there's a lot of
21 false information going around. I can talk to you before or
22 after work, on breaks or lunches, and sat back down.

23 Q Did you make any other similar announcements after that?

24 A I did so on the 27th, again, upstairs break room. It was
25 the first break, if I remember right. I got up to make the

1 announcement, two or three employees got up to leave. I
2 basically said the exact same thing, but as I was saying it,
3 after these employees left, 20 seconds, 30 second later Ivan
4 Vaivao came into the room, looked very stern, taking long
5 strides like he had a purpose or he was angry.

6 He walked from the door to the coffee machine. It looked
7 like he was going to get a cup of coffee, turned around and
8 started talking to another employee that happened to be
9 standing there, and then another manager came in right behind
10 him 20 seconds later and walked within, I don't know, three or
11 four feet of where Ivan was, turned around and acted like he
12 was watching TV.

13 Q How were you feeling at that point?

14 A Nervous. Very nervous.

15 Q And did you report back to work after that?

16 A I did. After break was over, I went down to my forklift
17 and started working in aisle 17. As I was working in aisle 17,
18 Art Manning came through in a strip cart and asked me if it was
19 true what I said. I asked him what that was. He said, your
20 announcement, what you said upstairs.

21 I said, I can't talk to you about that Art. I can do
22 that, you know, on a break or before or after work. He said,
23 just watch yourself, because they watching both of us, so watch
24 your back. He turned around and left after that.

25 Q Where were you when you had this conversation?

1 A We were in aisle 17, the deli section.

2 Q Were any other employees present?

3 A No.

4 Q Had Mr. Manning been in the break room when you made your
5 announcement?

6 A No, he had not.

7 Q Did he ever tell you how he learned that information?

8 A He did not. I assumed it was through the grapevine, but
9 that's speculation on my part.

10 Q Now, I'm going to draw your attention to two days later,
11 April 29, 2015. Did you report to work that day?

12 A I did.

13 Q And did you attend any meetings on that day?

14 A I did.

15 Q When did you first learn about this meeting?

16 A I was at the cross dock dropping off a bulk pallet and
17 gotten off my lift to label it. Ivan Vaivao walked by me. I
18 believe, Ernie Nicklen was with him, if I remember right. Ivan
19 told me in a very stern tone, get upstairs, we're having a
20 meeting, and he kept walking. I thought I was getting fired.
21 I texted the Union rep and told him to standby to call David
22 Rosenfeld's office. I turned on my recorder and went upstairs.

23 Q And where did you go to upstairs?

24 A As I got to the top of the stairs, I was directed to the
25 upstairs training room. I walked in and sat down about three

1 representation of the end of the meeting?

2 A Yes, it was.

3 Q And was it an accurate representation of up until the
4 point where you stopped recording?

5 A Yes, it was.

6 Q Have you ever listened to this entire recording?

7 A Yes, I have.

8 Q And do you have any reason to believe that the Board agent
9 did any type of editing once you gave her a copy?

10 A I do not.

11 MS. DEMIROK: Your Honor, at this time, General Counsel
12 would move to admit what's been marked as GC Exhibit 12(a) and
13 12(b).

14 MR. DAWSON: Subject to request for reconsideration, no
15 objection at this time, Your Honor.

16 JUDGE WEDEKIND: Thank you. It's received, 12(a) and (b).
17 **(General Counsel Exhibit Number 12(a) and 12(b) Received into**
18 **Evidence)**

19 Q BY MS. DEMIROK: Now, after that meeting, did you report
20 back to work?

21 A Yes, I did.

22 Q And did anything happen after that?

23 A Yes.

24 Q What was that?

25 A 1:00 break, I was working in -- over in aisle 49, and I

1 had -- I had -- I was there and an employee rolled up that I
2 had known for since I've been there. He's been there about six
3 months longer than I have. He said, "I finally put two and two
4 together. I understand what you're doing. I want you to be
5 careful." He said, "We know how this place is." Basically, he
6 was warning me he was concerned about my wellbeing in the
7 company.

8 Q Now, why does this stick out in your mind?

9 A Because Joe Remblance interrupted us.

10 Q And who is Joe Remblance?

11 A Joe Remblance is a safety manager.

12 Q And when you went through your supervisory chain, you
13 didn't mention him; why is that?

14 A Joe Remblance is outside that direct chain of command.

15 Q Now, what happened when -- where was Mr. Remblance when
16 you first noticed him?

17 A When I first noticed him, he was at the end of the aisle
18 on the pedestrian walkway, which was about 60 to 70 yards away.
19 He was headed north toward the offices.

20 Q And where were you?

21 A I was on the dock side of aisle 49.

22 Q And you mentioned he interrupted you. Can you tell us
23 about that?

24 A Yeah. He walked from the pedestrian walkway, like I said,
25 about 70 yards or so, 60 or 70 yards, asked us if we were on

1 break. Asked me specifically if I was on break, and then asked
2 the other employee if he was on break. We both said yes. He
3 asked us what we were talking about, and we both looked at each
4 other and told him work. He tried to make a little small talk;
5 it was obvious, we didn't want to talk to him.

6 He started to walk away, turned around and asked me how
7 much time I had left on my break. I looked at my phone, which
8 had a clock on it, and told him a couple of minutes. He said,
9 be sure to get back to work when your break is over.

10 Q Now, had Mr. Remblance ever approached you like this
11 before?

12 A No.

13 Q And after he left, what did you do?

14 A We finished our conversation and when break was over, we
15 both went back to work.

16 MS. DEMIROK: Your Honor, if I could just have a moment?

17 JUDGE WEDEKIND: Sure. Off the record.

18 (Off the record at 11:32 a.m.)

19 Q BY MS. DEMIROK: Now, Mr. Phipps, I think there's some
20 documents in front of you? I'd like you to find what's been
21 marked as -- what's been marked as GC Exhibit 14.

22 A Yes.

23 Q There is a mark on the bottom, right-hand corner; is that
24 the one on the top?

25 A Yes, ma'am.

1 Q Okay. Do you know anything about the testimony thus far
2 in the case?

3 A I know general terms of just someone -- like Ivan was on
4 Tuesday and Wednesday. But as far as specific, what people
5 said and that kind of thing, no.

6 Q Okay.

7 A Absolutely not.

8 Q All right. And you haven't discussed the proceeding with
9 anyone?

10 A No, other than what I've mentioned.

11 Q Okay.

12 A You know.

13 Q Correct. Right. Right. So, Mr. Phipps, you're aware of
14 Shamrock's open door policy, right?

15 A Yes, I am.

16 Q And I think you mentioned it a couple of times in here in
17 your direct?

18 A Yes, I did.

19 Q And you've used the open door policy to make complaints in
20 the past, right?

21 A I have.

22 Q And just as an example, I think it was May of 2014, you
23 made a complaint. I think it was about the schedule change,
24 when Shamrock combined nightshift; is that right?

25 A May 2014. That would be the summer.

1 Q Going into summer, yes.

2 A We talked a lot about that, off and on.

3 Q Do you remember making a complaint to Ivan Vaivao, Jerry
4 Kropman, and Armando Gutierrez?

5 A I talked to all three of those people about the changes
6 and what was going on, yes.

7 Q You also made an appointment on September 12th of 2014,
8 with Mark Engdahl. Do you recall?

9 A Yes, I did.

10 Q And Mark is the VP of operations, right?

11 A Yes, he is.

12 Q And the purpose of that appointment was to discuss some
13 additional complaints about how management was treating
14 employees?

15 A Yes.

16 Q And Mr. Engdahl told you it was his job to fix problems?

17 A He did.

18 Q Okay. He also said that he took your complaints seriously
19 and he'd look into them.

20 A That's what he said, yes.

21 Q Now in addition to associates approaching management,
22 Shamrock also schedules meetings with employees to communicate
23 information on a number of items, correct?

24 A They do.

25 Q And they solicit feedback from employees at those

1 meetings?

2 A Sometimes.

3 Q And these are -- some of them are big meetings. Some of
4 them are small meetings. Some are individual meetings, right?

5 I know that's compound. If I need --

6 A It is very compound, yes.

7 Q Okay. So some -- there are some --

8 A They use --

9 Q -- let's say big meetings.

10 A -- all of them, yes --

11 Q Yeah.

12 A -- I think is what you're getting at.

13 Q Correct, yeah. Big meetings, let's say over 100 people.

14 A Uh-huh.

15 Q They have those meetings, right?

16 A Sure. And those are called town halls.

17 Q Town hall. Right. Right. Small meetings, so let's say
18 under 20 people.

19 A Yeah.

20 Q And then sometimes they have individual meetings?

21 A Rarely, but yes.

22 Q Okay. Now for -- as an example of kind of what we call
23 the smaller meeting, they've had roundtable meetings from time
24 to time, to figure out what issues associates have that need to
25 be addressed?

1 A From time to time, yes.

2 Q From time to time. And I think you've expressed the
3 opinion that nothing really ever gets fixed because of these
4 meetings, right?

5 A I think what I said was not much gets fixed.

6 Q Not much gets fixed.

7 A I've seen minor things get fixed. But as far as major
8 issues, no.

9 Q Okay. But you would agree that Shamrock has conducted
10 hundreds of these roundtable meetings?

11 A How big of a timespan are you talking about?

12 Q Within your knowledge. So since you --

13 A Well, I've been there 20 years. So yes, that would be an
14 accurate statement.

15 Q Okay. Then there's -- there are other meetings. Like,
16 for example, in late May or early June of 2014, do you recall
17 Jerry and Ivan, and I mean Jerry Kropman and Ivan Vaivao, they
18 conducted a meeting with about 100 employees on the schedule
19 change? Do you recall that?

20 A Are you referring to the start of the shift and the fact
21 that they were talking about laying off people?

22 Q Correct. Correct.

23 A That was the meeting where they threatened to fire us,
24 yes.

25 Q Well, I don't know about that, but that's --

1 A I do.

2 Q But that was the meeting -- that was late May, early June
3 2014?

4 A Something like that, yeah.

5 Q Okay. And they held that meeting because all of the
6 complaints regarding the change?

7 A My opinion, it was to lay down the law and tell us what
8 was going on.

9 Q So you don't think they held the meeting because of the
10 change?

11 A I didn't say that.

12 Q I'm sorry. I'm sorry. You're right. Is it your
13 testimony that they did not conduct the meetings to deal with
14 the complaints?

15 A They -- that meeting, if we're referring to the same
16 meeting that I recall, we were brought in. The rules for the
17 summer were laid down. And we were told what would be
18 happening over the course of the summer. We were told that if
19 we did not work up to production, that we would be fired. And
20 they had 25 other people that would be willing to come in and
21 take our place.

22 Q Okay. You gave a declaration -- or an affidavit -- I'm
23 sorry -- to the Board in this case, correct? Actually, several
24 affidavits to the NLRB.

25 A Yes.

1 Q You gave an affidavit on May 21st; is that right?

2 A I gave I think two or three of them.

3 Q Two or three. Okay. And each time, you were put under
4 oath. Do you recall that?

5 A Yes, I was.

6 Q So it's kind of, you know, the truth, the whole truth,
7 nothing but the truth?

8 A Sworn statement, yes.

9 Q Okay. You told the truth, right?

10 A Uh-huh.

11 Q And you told the whole truth and nothing but the truth?

12 A Everything I understood to be true, yes.

13 Q Okay. I'm going to hand you a copy of what I'll mark
14 Respondent's Exhibit 1.

15 **(Respondent Exhibit Number 1 Marked for Identification)**

16 Q BY MR. DAWSON: If you could just take a look at that and
17 let me know if that is a copy of the affidavit that you gave on
18 May 21st?

19 A That appears to be it, yes.

20 Q And if you look with me at page 12, lines 11 through 15.
21 If you'd let me know when you're there. And again, I asked
22 you if the meeting was held because of all the complaints
23 regarding the schedule change. And I believe your answer was
24 that it was not; am I correct?

25 A Because of the schedule change?

1 Q Correct. Because of the complaints regarding the schedule
2 change.

3 A I don't believe that meeting was conducted because of the
4 complaints of the schedule change.

5 Q Okay.

6 A And I've already stated -- never mind. I'm sorry.

7 Q I understand.

8 A I don't want to --

9 Q But if --

10 A -- be combative.

11 Q If you can look at line 11 with me.

12 A Uh-huh.

13 Q It says: Because of all of our complaints, the first
14 Sunday we all worked as a crew under the new schedule around
15 May 25th, 2014, or June 1st. The employee has a meeting with
16 all the employees before the shift started, in the upstairs
17 break room.

18 Did I read that correctly?

19 A Yes, you did.

20 Q Do you recall, on August 2014 -- you know Natalie Wright.
21 I think you mentioned her in your direct examination.

22 A Yes, I did.

23 Q Do you recall, in August 2014, Natalie walking through
24 your work area and asking how it was going?

25 A Natalie has walked through my work area several times,

1 yes.

2 Q Okay. Do you remember that particular occasion?

3 A You would have to refresh my memory as to what --

4 Q Sure. Sure, absolutely.

5 A -- you're talking about.

6 Q On this occasion, you told her, generally, that the mood
7 in the warehouse was angry.

8 A Yes, I did.

9 Q Okay. And that was August 2014?

10 A I don't recall the exact date.

11 Q You don't have any reason to dispute that, right?

12 A Right.

13 Q Okay. And if that's what you had said in your declaration
14 -- or affidavit -- I'm sorry. I keep calling it a declaration.
15 You wouldn't have any reason to quibble with that now, right?

16 A No.

17 Q Okay. And after you explained the problem, Natalie said
18 she'd check into your complaints, right?

19 A Uh-huh.

20 Q And she said she'd see what can be done to resolve them.

21 A We hear that a lot, yes.

22 Q But she did say that on that occasion?

23 A She said that to me on several occasions, yes.

24 Q But she said it on that occasion, right?

25 A Well, again, as I'd mentioned, she walks through my area

1 several times.

2 Q Sure.

3 A And we've had several conversations. And I will say this,
4 that when I have something that I bring up to her, she says
5 she'll look into it, yes.

6 Q Okay. And she'll say she see what she can do to resolve
7 it?

8 A Sometimes, yeah.

9 Q On September 15th of 2014, Jerry Kropman asked to meet
10 with you. Do you recall that?

11 A Yes.

12 Q And this was -- this would have been just a couple of days
13 after you met with Mr. Engdahl, right?

14 A Met with Mark on Friday, Jerry on Monday.

15 Q Okay. So Friday was the 12th. Monday, then, would have
16 been the 15th.

17 A Yeah.

18 Q Okay. That meeting you talked with Jerry for two hours?

19 A Uh-huh.

20 JUDGE WEDEKIND: Yes or no.

21 Q BY MR. DAWSON: He told you that --

22 THE WITNESS: Yes. I'm sorry.

23 MR. DAWSON: Yeah. I'm sorry. And I should have --

24 THE WITNESS: I'm sorry, Your Honor.

25 JUDGE WEDEKIND: That's fine.

1 Q BY MR. DAWSON: You told him about the same complaints
2 about how the warehouse was being managed, and so forth?

3 A Yes. We had that discussion.

4 Q And Jerry said that he understood you were upset, correct?

5 A That's what he said.

6 Q And he asked you to talk to him?

7 A Yes.

8 Q And after you told him what was going on, Jerry said he'd
9 look into it?

10 A Yes.

11 Q And he asked you for some time, right?

12 A Yes.

13 Q Around January 14th of 2015 --

14 MS. DEMIROK: Your Honor, I'm going to object to outside
15 the scope. And this maybe later than it could have, but this
16 line of questioning. We spoke about specific meetings that are
17 alleged in the complaint. We didn't talk about any other
18 meetings. We didn't even talk about whether there were other
19 meetings previously. So I'm going to have to object on the
20 ground that this is outside the scope of direct.

21 JUDGE WEDEKIND: There are some allegations in the
22 complaint about solicitation of grievances with a promise to
23 remedy. Were those part -- as part of the meetings that we put
24 in?

25 MS. DEMIROK: Those are part of the meetings that we

1 discussed on his direct, but these are not any of the meetings
2 that have been raised on our -- on cross-examination.

3 JUDGE WEDEKIND: Okay. Do you want to explain why you're
4 asking the question?

5 MR. DAWSON: Sure. And just to show that this was not a
6 practice that the Employer implemented once the union campaign
7 started, that, in fact, even in the year leading up to it, and
8 even earlier, that there was a continuous practice on the part
9 of the Employer seeking employee feedback and saying that they
10 would remedy issues that arose.

11 MS. DEMIROK: And I would suggest that they should call
12 them on -- during their case in chief if it's going to be part
13 of their defense.

14 JUDGE WEDEKIND: Well, you know, this is a little bit
15 different than the situation we had on Friday. He's on the
16 stand. He's given testimony about a lot of issues. The
17 Company would have a right to recall him if they wanted to. I
18 believe they can subpoena him to testify. Why not allow it to
19 go forward? Any response?

20 MS. DEMIROK: I would just ask if they would intend to
21 call him on their --

22 JUDGE WEDEKIND: I'm going to overrule your objection.

23 MS. DEMIROK: Thank you, Your Honor.

24 JUDGE WEDEKIND: Go ahead.

25 MR. DAWSON: Thank you, Your Honor.

1 Q BY MR. DAWSON: So, Mr. Phipps, I think I just asked you
2 about a conversation that you had with Tyler Armstrong. Do you
3 know Tyler?

4 A Yeah.

5 Q Tyler is a supervisor, right?

6 A Tyler has been fired.

7 Q Oh, right. He's a former supervisor. I guess I should
8 use a --

9 A Yeah.

10 Q -- different adjective. Okay. So Tyler is a former
11 supervisor at Shamrock. Was he employed at Shamrock on January
12 14th, to the best of your knowledge?

13 A To the best of my knowledge, he was.

14 Q Okay. Do you remember having a conversation with him on
15 that date?

16 A Are you referring to the one that we had in the aisle?

17 Q Yes.

18 A Yes, we did.

19 Q And that conversation was about how people felt -- and by
20 people, I'm going to say employee -- how they felt about the
21 upcoming change in the forklifter schedule.

22 A he asked me what the problems were in the warehouse.

23 Q Okay.

24 A Because he was being approached by a lot of different
25 people about things that were going on and people that were

1 very unhappy with what was happening. And he was getting, as
2 he said, blindsided by it.

3 Q Uh-huh. When he -- about what was happening, was it
4 specific to the schedule change or were there other --

5 A There were other issues.

6 Q -- things?

7 A Other issues.

8 Q Okay. But Mr. Armstrong had been approached, and he was
9 asking you what's going on?

10 A Uh-huh.

11 Q And you told him --

12 A I'm sorry. Yes.

13 Q -- the guys are upset?

14 A Yes.

15 Q All right. And Mr. Armstrong even called you later that
16 night to ask for some additional detail?

17 A Yes, he did.

18 Q And you gave him more details about the concerns, right?

19 A Yes, I did.

20 Q And he said he'd take those concerns to his boss and he'd
21 see what he could do?

22 A He did.

23 Q Now if I could shift gears for a minute. My recollection
24 from your direct examination is that you were the first
25 employee to make contact with the Union, is that right, to your

1 asked you if you knew anything about union organizing in the
2 warehouse?

3 A He did.

4 Q Okay. But -- but Jack -- Zack actually just said there
5 were rumors of organizing in the warehouse, correct?

6 A He asked me if I knew anything about it.

7 Q Okay. Let's look at page 20 of your affidavit. That line
8 12 -- I'm sorry line 10 through 12. If you can let me know
9 when you're there. "He meaning Zack told me that the Teamsters
10 were standing at the gates and handing signature cards to the
11 drivers. White told me there were rumors in the warehouse
12 about an organizing campaign. I asked him if he knew anything
13 about it because I didn't want the Teamsters in the warehouse."
14 Did I read that correctly?

15 A No. The transportation manager told me that the Teamsters
16 were standing at the gates and handing signature cards to
17 drivers.

18 Q I'm sorry. I apologize. So -- so -- I think I started a
19 little bit too early. But for -- for -- on line 11 and 12, it
20 says, "White told me there were rumors in the warehouse about
21 an organizing campaign and I asked him if he knew anything
22 about it." Did I read that correctly?

23 A I asked him if he knew anything about it because I didn't
24 want the Teamsters in the warehouse, which is what I said to
25 him.

1 Q Okay. But Zack sustained said he -- that there were
2 rumors of an organizing campaign?

3 A In the warehouse, yes.

4 Q In the warehouse. But he didn't ask you how you felt
5 about it --

6 A He did not ask --

7 Q -- or what you knew about it? Am I correct? Didn't you,
8 in fact, ask Zack what he knew about the campaign?

9 A I did --

10 Q Okay.

11 A -- yes.

12 Q And Zack responded -- if you look down at line 13 -- no,
13 he didn't know anything?

14 A But he had heard that whoever was involved was really
15 close to getting the Union in.

16 Q Okay. But he know anything about -- he didn't say, "I
17 know who's behind it, I know who's doing anything like that,"
18 correct?

19 A Correct.

20 Q All right. If you can turn back to the complaint. And
21 sorry for jumping around here again. But it's -- it's the
22 document with the -- on the spindle thing there.

23 A Uh-huh.

24 Q And -- and if you can look with me at page 12.

25 A Page 12. Okay. Paragraph 13 at the top of the page.

Excerpt 16

PX 54

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 14, 2015

Pages: 479 through 702

Volume: 5

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Steven Lee Phipps	484	570	631	637	
Thomas Wallace	647	667	696	697	

1 examined and testified as follows:

2 JUDGE WEDEKIND: Thank you very much. Will you state your
3 name and spell it for us?

4 THE WITNESS: Thomas Wallace, T-H-O-M-A-S, last name
5 Wallace, W-A-L-L-A-C-E.

6 JUDGE WEDEKIND: Thank you.

7 DIRECT EXAMINATION

8 Q BY MS. DEMIROK: Good afternoon, Mr. Wallace. Are you
9 nervous today?

10 A Yeah, a little.

11 Q You ever done anything like this before?

12 A No.

13 Q Well, you know me, I'm Sara Demirok. I'm going to ask you
14 some questions, and Mr. Wallace, are you currently employed?

15 A No.

16 Q Have you ever been employed by Respondent, Shamrock Foods
17 Company?

18 A Yes.

19 Q And when were you hired?

20 A May 8th, 2008.

21 Q When did you stop working there?

22 A Just on April 6th, 2015.

23 Q And from May 8th, 2008 to April 6, 2015, did you ever
24 quit?

25 A No.

1 Q During that time did you work there continuously?

2 A Yes.

3 Q In what position did you most recently work?

4 A Warehouse loading.

5 Q And could you briefly describe for us what your duties
6 were in that position?

7 A Yeah. I loaded trailers for route delivery for the
8 following day.

9 Q Did you use any tools to load the trailers?

10 A Yeah, just pallet jacks, just the general warehouse
11 duties.

12 Q Who was your immediate supervisor?

13 A Jake Myers.

14 Q And do you know who he reports to?

15 A Yes, Armando Gutierrez.

16 Q And do you know who he reports to?

17 A Yes. Ivan Vaivao.

18 Q And what about Mr. Vaivao, who does he report to?

19 A Jerry Kropman.

20 Q Were there any floor captains that you worked with?

21 A Yes, three.

22 Q And who were those floor captains?

23 A Zack White, Art Manning and Pete -- I'm not sure of Pete's
24 last name.

25 Q Now, of those floor captains that you mentioned, how many

1 associates do they oversee?

2 A I'm saying probably 20 to 30 just in our area.

3 Q I'm going to draw your attention to January 28th, 2015.

4 Did you report to work that day?

5 A Yes.

6 Q And did you attend any meetings on that day?

7 A Yes, I did.

8 Q Were other employees present during that meeting?

9 A Yes.

10 Q About how many?

11 A The whole floor, so probably 200 plus.

12 Q And who conducted that meeting?

13 A That meeting was presented by Mark Engdahl.

14 Q And where was that meeting held?

15 A We stayed in the building; it's like a big auditorium.

16 Q Now, I'd like you to walk us through what happened in that
17 meeting.

18 A Well, that was the first meeting that the company gave on
19 Unions. They presented like an anti-Union video of the Union
20 members harassing people on the video, and after that, Mark
21 gave his personal accounts to why he wouldn't think Shamrock
22 would be a good fit for a Union.

23 Q Did anything else happen during the meeting?

24 A Yeah. After he gave his account of why he didn't think
25 Shamrock would benefit from the Union, he let us know that we

1 can come to them with any issues and like an open-door policy
2 and after that, he ended the meeting with questions from
3 employees.

4 Q And did anyone ask any questions?

5 A Yeah. There was about four questions. I honestly don't
6 remember what they were and who asked them, but on the fifth
7 question, I asked Mark a question.

8 Q Do you remember what you asked?

9 A Yeah, I asked him why is our competitors Union and we're
10 not.

11 Q And did he respond?

12 A Yeah. He said that he didn't know, that he thought maybe
13 it was like a financial reason.

14 Q Now at this time, were you aware of any Union organizing
15 at the warehouse?

16 A No, not until that time.

17 Q And after this meeting, did you report back to work?

18 A Yeah, I went back to my area where I work at.

19 Q And did anything happen when you reported back?

20 A Yeah. On the way there a lot of employees were talking
21 about, you know, that they're kind of really scared now, that
22 they're showing movies about the Union, and I went back to
23 work, and then shortly after, I'd probably say within 30
24 minutes, my manager came to me, Jake Myers, and he asked me
25 what I thought about the Union.

1 Q And what did you say?

2 A I told him honestly, I have to do some research, but I did
3 talk to my dad and my neighbor and the Sysco driver, and they
4 said that the Union has better benefits for employees, and I
5 told him I'd have to do my research first.

6 Q And when were you when this conversation took place?

7 A I was at my loading door, what I call the dock door.

8 Q And can you describe for us, just so we have a good idea
9 of what the workplace is like --

10 A Yeah, yeah, we're loading trailers, so we have trailers
11 from door two to 35, so we get assigned routes at each trailer
12 door, so when I came back from the meeting, I just went back to
13 my door that I was assigned.

14 Q And were there any other employees that --

15 A No.

16 Q -- that were nearby?

17 A No. And after I told him what I said, he shook his head
18 in agreement with me and didn't say anything.

19 Q And you said on this day you weren't aware of any Union
20 organizing, but at some point, did you hear about the Union
21 campaign in the warehouse?

22 A Up until that day, that was the first day I heard about
23 it.

24 Q What did you hear about?

25 A Well, just mainly chatter from other employees about how

1 maybe it's be a good fit for Shamrock. But after that there
2 was only, to my knowledge, is to all the meetings that we had
3 at work.

4 Q Did you ever go to a Union meeting?

5 A No. No. Shortly after my friend, Miguel, he took us
6 outside in the parking lot and he was telling us that there was
7 going to be like a Union meeting that we can go to soon, and
8 that -- he didn't give me the date right then and there, but
9 shortly after, I did go to like an earlier meeting at Denny's.

10 Q Do you know what Denny's that was?

11 A Yeah, that was on I-17 and Thomas.

12 Q And how did you know how to find where the meeting was?

13 A Yeah, Miguel gave me the phone number to Steve Phipps, and
14 I didn't know Steve prior to this, and I had the number and
15 right after work, I called it and he said they're at Denny's on
16 I-17 and Thomas, and that's where I went to.

17 Q And did you find them at Denny's?

18 A Yeah, yeah. He said they're in the back corner. So when
19 I went in, they were just breaking down, and present at the
20 table was Steve Phipps, Eric Anderson and Mike Wizner.

21 Q After meeting with the organizers, what, if anything, did
22 you decide going forward?

23 A Well, I was just basically asking them basic questions
24 about Union dues, nothing out of the ordinary. I did decide
25 that night that I believed a Union would benefit Shamrock and

1 the employees, so I ended up signing a Union card that night.

2 Q And then what happened when you left Denny's?

3 A Yeah, well, after we were at dinner, my wife was calling
4 me and telling me to come home, so when I left, I got in my
5 truck and I drove around and I saw Art Manning's red truck in
6 the parking lot.

7 Q And how do you know that it was Mr. Manning's truck in the
8 parking lot?

9 A Art has a very older, distinguished truck, and he has like
10 a football decal on the back of it, so once I turned the
11 corner, I knew it was him, but I didn't see him. I just saw
12 his truck.

13 Q And how did you feel when you saw Mr. Manning's truck
14 there?

15 A I was nervous, so I called Miguel and Miguel told me that
16 he was actually in the parking lot and that he saw Art walk in,
17 and he was afraid to go in, so he stayed in his truck. So I
18 felt nervous for the people who, like Steve or other people
19 that were in Denny's.

20 Q And why did Mr. Manning's presence make you so nervous?

21 A Well, maybe a year prior when they worked shifts, a lot of
22 people were unhappy about it, and Art came to me and he opened
23 his phone, and he has phone numbers of managers higher than the
24 ones I mentioned. He's been there a very long time, and he
25 knows a lot of the people above my supervisors.

- 1 trailer.
- 2 Q They put the stuff on a belt?
- 3 A Yeah.
- 4 Q Is that right?
- 5 A Uh-huh.
- 6 Q Okay. And the belt comes down and you take it off?
- 7 A Yeah.
- 8 Q I see. All right. Now I think you talked about an all
- 9 associates meeting on March 31st.
- 10 A Yes. Uh-huh.
- 11 Q Do you recall that?
- 12 A Yeah.
- 13 Q That was a mandatory meeting?
- 14 A Yes, town hall. Uh-huh.
- 15 Q And I think you mentioned that you asked Bob Beake some
- 16 questions about healthcare?
- 17 A Yes. Uh-huh.
- 18 Q Now there were other people in that meeting who asked
- 19 benefits questions, correct?
- 20 A That's true, yes.
- 21 Q Was Frank Sanchez one of them?
- 22 A No, his name's Richard Sanchez.
- 23 Q Richard Sanchez. I'm sorry.
- 24 A And then the girl -- it was a lady. I don't know who she
- 25 was but I believe she asked about the medical too. I'm not

1 sure.

2 Q They were both asking about benefits?

3 A Yeah.

4 Q All right. Do you know if anything -- were they -- if
5 they were disciplined?

6 A Not that I know of.

7 Q Not that you know of. Okay.

8 A But I know Richard Sanchez also applied for the supervisor
9 position as well.

10 Q Okay. Same as you?

11 A Well that -- on that job posting I didn't post for that
12 supervisor job. He did. But I did post for one prior to that.

13 Q Same?

14 A Yeah, same title.

15 Q Same title --

16 A Yeah.

17 Q -- yeah.

18 A Uh-huh.

19 Q Thank you. I was trying to think of the word. Okay. Now
20 when you asked your question I think you said people clapped
21 but --

22 A Yes.

23 Q -- most people laughed though didn't they?

24 A Well there -- I can't explain it. It was -- there's
25 people around me and they're like -- like that -- and like yeah

1 JUDGE WEDEKIND: Sure.

2 MS. OVIEDO: We'll call our friends over at EEOC.

3 MR. DAWSON: Yeah. Now I know there's -- I know

4 there's --

5 JUDGE WEDEKIND: We're still on the record. Let's --

6 MR. DAWSON: -- cooperation.

7 JUDGE WEDEKIND: -- okay. I sustained the objection to

8 the question so there's no need to answer it.

9 THE WITNESS: Okay, Judge.

10 MR. DAWSON: Okay.

11 Q BY MR. DAWSON: Mr. Wallace, if we could go back just for

12 a moment to the March 31st meeting --

13 A Yes, sir.

14 Q -- your questions obviously were just about healthcare,

15 right?

16 A Yeah.

17 Q And nobody else brought up any issues about the Union --

18 A No.

19 Q -- correct, that you can recall?

20 A No, Union wasn't talked about --

21 Q Wasn't talked --

22 A -- that day.

23 Q -- about. Okay. And in fact you have no knowledge of

24 whether Shamrock was aware of anyone's Union activity?

25 A At that time, no.

1 Q Okay. And that included your own?

2 A Right.

3 Q Okay.

4 MR. DAWSON: Your Honor, nothing further.

5 JUDGE WEDEKIND: Okay. Any redirect?

6 MS. DEMIROK: Just a couple of questions.

7 JUDGE WEDEKIND: Sure.

8 **REDIRECT EXAMINATION**

9 Q BY MS. DEMIROK: Mr. Wallace, aside from yesterday did we
10 meet on any other days?

11 A Yes, we did.

12 Q Now you mentioned earlier about how discipline drops off.
13 Can you explain to us what that -- what the system is?

14 A A lot of employees can't explain it and I can do the best
15 that I can. It's a 12 month rolling period so you're allowed
16 four. I believe it's four call ins within a year so or --
17 yeah. Four within a year and then you have to wait 12 months
18 for one of those to fall off.

19 Q Have you ever gotten discipline that has eventually fallen
20 off?

21 A Yeah, definitely.

22 Q And I just want to be real clear. What were the reasons
23 you were told of why you were being fired?

24 A Because I brought up about the healthcare and that I was
25 rude and disrespectful when I said -- when I asked a question.

1 And those were the reasons I was given.

2 Q No other reasons?

3 A No.

4 MS. DEMIROK: No further questions.

5 MR. DAWSON: Just one question if I may, Your Honor?

6 RECROSS-EXAMINATION

7 Q BY MR. DAWSON: Mr. Wallace, you don't have any -- you
8 didn't have any conversations I think you mentioned with anyone
9 else from management regarding your discharge --

10 A No, sir.

11 Q -- other than Mr. Vaivao -- sorry -- Mr. Vaivao and Mr.
12 Allen?

13 A Yes, the following day I did call Jake and let him know
14 what happened. And I got a hold of Jake and he was like what?
15 I can't believe that. And then other than that I haven't
16 talked to anyone from Shamrock.

17 Q Okay. And were you also told during that meeting that you
18 were insubordinate?

19 A No. Huh-uh.

20 Q You were not? Okay.

21 A No, they -- Ivan told me that I was -- I disrupted senior
22 staff and that I was rude and that was the reason why he gave.

23 MR. DAWSON: Nothing further, Your Honor.

24 JUDGE WEDEKIND: Done?

25 MS. DEMIROK: Nothing, Your Honor.

Excerpt 17

PX 55

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 15, 2015

Pages: 703 through 889

Volume: 6

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I N D E X

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1 and the employees were there in April?

2 A I can't specifically recall that meeting, but it's
3 possible that that happened, yes.

4 Q But you did remember the meeting where you talked to them
5 about the layoff, right?

6 A Yeah. I had more than one meeting about that subject.

7 Q And the meeting where you guaranteed them that there
8 wouldn't be a layoff? In that meeting?

9 A I wouldn't say I guaranteed them. I think that would be
10 the wrong word. I think I would say that we would do
11 everything in our power to avoid that.

12 Q But earlier you said you told them you were committed to
13 the point where you put it in writing. Isn't that what a
14 guarantee --

15 A Put it in writing to do everything in our power to avoid
16 that, correct. I never used the word guarantee.

17 Q But when you told them they could take it to the bank,
18 that was what? Just a figure of speech?

19 A Yes, ma'am.

20 Q Well, during the same meeting you also talked about how
21 employees were still upset over the healthcare; is that right?

22 A I don't remember talking about that, I'm sorry.

23 Q No problem. Do you remember meeting with Mr. Lerma in
24 your office?

25 A I do.

1 Q And that was on May 5th, 2015; does that sound about
2 right?

3 A About right, yeah. I can't say for sure that day, but I
4 do remember a meeting with Mr. Lerma.

5 Q How was it brought to your attention that you should have
6 a meeting with him?

7 A I was approached by several associates on the floor.

8 Q And then did you inform Mr. Vaivao that you wanted him to
9 be there too?

10 A I believe Ivan was also approached by several people.

11 Q So how did it come about that you were both in that
12 meeting?

13 A Here again, I don't specifically recall. But I'm sure
14 Ivan and I talked about it and said, let's head any problems
15 off at the pass and be proactive and sit down and talk about
16 what was going on.

17 Q Do you ever communicate by e-mail with Mr. Vaivao for any
18 reason?

19 A He, again, sits right across from me.

20 Q Do you guys share an office?

21 A No. He sits across the hall from me. So, no. We -- I
22 walk over to his office if I need to talk to him.

23 Q And employees were approaching you, right?

24 A Yes.

25 Q And they were upset about things, right?

1 A Yes.

2 Q They were upset that they kept being approached about the
3 Union; is that right?

4 A No.

5 Q They were upset that they were being heckled?

6 A The word they used was harassed.

7 Q Did they describe the harassment?

8 A Yes. One individual said he was having pens thrown at him
9 because he wouldn't sign a card, specifically. Several others
10 said that they were not getting drops, which is a replenishment
11 of a pick slot by a forklift driver so that they can do their
12 job and pick their orders.

13 Q Isn't it true, though, that the forklifters, they just get
14 an order. They don't know who placed the order; is that right?

15 A No. People call specifically for a drop. So they know
16 exactly who called for it.

17 Q But it's in an automated system, right?

18 A That automated system doesn't work very well. They
19 usually holler to the end of the aisle saying I need such and
20 such.

21 Q But you have a system in place so they don't have to do
22 that, right?

23 A Supposed to.

24 Q It just doesn't work?

25 A It works all right, but it's certainly a lot easier to

1 say, hey, can you please drop this for me.

2 Q But what would the protocol be? To use the system?

3 A The order selector would not know whether the system had
4 called for a drop or not. They have no on-board computer to
5 look at. The only person who would know that would be a
6 forklifter.

7 Q So walk us through. How do people use the system?

8 A The order selector gets a stack of labels and goes through
9 the pick slots and applies labels to cases as they pick them.

10 Q Uh-huh.

11 A And if they get to a slot that's empty and needs
12 replenishment --

13 Q Uh-huh.

14 A -- they holler at the forklift driver, hey, I need to get
15 this filled. I need a drop, is what they call it.

16 Q No, I mean, what's the protocol for using the automated
17 system?

18 A The automated system is computer generated based off of
19 when orders are supposed to be picked. And it goes directly to
20 the forklifter's screen and gives him a list of things that
21 will need to be replenished in that chunk of work, or we call
22 it a wave. And so, he knows around a certain time he's going
23 to need to drop these, not for sure when or a specific order,
24 because orders can be picked in different sequences depending
25 on what's going on on the loading dock. So that would be why

1 people would need to call for a specific drop, hey, I'm out of
2 this.

3 Q When they use the automated system, who puts the order
4 into the system?

5 A The computer.

6 Q The computer does it itself?

7 A Uh-huh.

8 Q So no one goes to the computer to say, I need this
9 particular --

10 A No.

11 Q How does the computer know?

12 A Based off the batches of orders it releases because it
13 knows how many items fit in each slot. And it knows around
14 when they're going to be picked, but not, you know, obviously
15 not for sure when. It's not a real time system, it's a batch
16 system.

17 Q I bet that system costs a lot of money, didn't it?

18 A I wouldn't know. It's been around a long time.

19 Q But generally, the forklifters have a screen that tells
20 them what to go and pick out of the warehouse?

21 A Yeah. It gives them tasks.

22 Q And on that screen, it doesn't say who placed the order
23 because the computer did, right?

24 A In that case, yes.

25 Q Okay. Now, going back to these concerns that employees

1 came to you with, you said that they were concerned about
2 forklifters not bringing down certain items for them?

3 A Uh-huh.

4 Q And you described that as a potential slow down at one
5 point; is that right?

6 A I may have.

7 JUDGE WEDEKIND: Excuse me. Are you a witness in this
8 proceeding?

9 UNIDENTIFIED SPEAKER: No.

10 JUDGE WEDEKIND: Okay. Thank you.

11 Q BY MS. DEMIROK: And when these employees came to you with
12 their concerns, it was a little bit more specific, wasn't it?

13 A They were specific about the one individual that they were
14 concerned with, yes.

15 Q Yeah. And they said Mr. Lerma was doing that because
16 they, the employees who came to you, didn't hold the same point
17 of view about the Union as Mr. Lerma did.

18 A They thought that, yes.

19 Q So you thought that was harassment?

20 A No. I didn't think that. I thought it was something that
21 needed to be dealt with, because we can't have discord out on
22 the work floor. It doesn't service our customers.

23 Q So when you told Mr. Lerma that you heard there was
24 heckling going on, specifically what were you referring to?

25 A We sat down with Mr. Lerma and had a very general

1 conversation with him, no accusations or anything like that,
2 and said there had been some complaints off the floor that this
3 could potentially be going on.

4 And we explained to him, once again, Shamrock's position
5 on all of us working together, and having a harmonious work
6 environment no matter what your personal views were on --
7 whether you were for or against a union, we all needed to work
8 together. And just wanted to reiterate that to him in a very
9 friendly, non-threatening manner.

10 And he smiled and had a great conversation with us, seemed
11 very relaxed. I wanted to make sure that he knew, since he was
12 getting called into the, quote, principal's office, this, you
13 know, was something where I didn't want him to be nervous, you
14 know, so I tried to explain to him this is just a friendly
15 conversation, and we just went through that, and he absolutely
16 agreed, and smiled, and we shook hands, and went on. That was
17 it.

18 Q I'm not sure if I have an answer to my question, which was
19 when you told him that there was heckling going on, what
20 specifically --

21 MR. DAWSON: Objection.

22 Q BY MS. DEMIROK: -- were you referring to?

23 MR. DAWSON: I don't think the witness said he --

24 JUDGE WEDEKIND: Well, your --

25 MR. DAWSON: -- he used the word heckling.

1 JUDGE WEDEKIND: The question was already asked earlier.

2 Did you ever use the word heckling?

3 THE WITNESS: I can't testify to the fact I used the word
4 heckling, no.

5 Q BY MS. DEMIROK: Well, when you described to Mr. Lerma why
6 he was there --

7 A I would have described it like I just described it to you.

8 Q But what were you referring to?

9 A I gave him specifics that drops weren't being done and,
10 you know, things like that, and that we needed to all work
11 together to service our customers.

12 Q And you speaking as generically as you could; is that
13 right?

14 A Yeah, I believe I tried to do that, because this was a
15 conversation to try to deescalate things and that was the goal
16 there.

17 Q And you know in your position, because you educate
18 employees about unions a fair amount. That's fair to say,
19 right?

20 A That's one of my functions.

21 Q And so you know there's a line you have to tread in
22 discussing unions with employees; is that right?

23 A Absolutely.

24 Q But ultimately you said that Mr. Lerma's -- you told him
25 this, that his conduct wouldn't be tolerated; is that right?

1 A I can't specifically say that, but I probably would have
2 said something like that, that we don't tolerate, you know, any
3 sort of harassment or anything like that. You know, I'm sure I
4 said something to that effect, because we don't. I mean we
5 have policies against that.

6 Q Right. And when you get a complaint of harassment there's
7 usually an investigation, right?

8 A If it was a formal complaint of harassment, yes.

9 Q But these weren't formal complaints; were they?

10 A I took them as -- you know, I was stopped out on the floor
11 and said, hey, you know, this is going on. Can you see if you
12 can get it to stop?

13 Q And they never made written statements for you; did they?

14 A Not that I recall, no.

15 Q Because it wasn't a formal complaint; was it?

16 A They were just -- they were complaints.

17 Q But not a formal one, right?

18 MR. DAWSON: Objection. Maybe she can define what formal
19 meant?

20 THE WITNESS: Yeah, I don't know that I -- I don't know
21 what you're getting at.

22 Q BY MS. DEMIROK: I was just using the words that you used.

23 A They were given to me as complaints, so I dealt with them.
24 That's part of my job.

25 Q Are you pretty familiar with the -- Shamrock's policies,

1 rules, clerk rules, and other policies?

2 A Generally.

3 Q Are you familiar with a cell phone policy at Shamrock?

4 A We don't allow the use of cell phones in the warehouse.

5 Q What about in the break rooms?

6 A Break time is everybody's time. They can do whatever they
7 want on break time.

8 Q How long have you had that policy?

9 A I'm going to say years, I think.

10 Q Okay.

11 MS. DEMIROK: Your Honor, could I have a moment?

12 JUDGE WEDEKIND: Sure. Off the record.

13 (Off the record at 11:01 a.m.)

14 JUDGE WEDEKIND: We've had a discussion off the record
15 about amending the complaint. General Counsel, would you state
16 again you want to amend the complaint to do what?

17 MS. DEMIROK: Yes, General Counsel would like to amend the
18 complaint to include an allegation that the Employer has
19 promulgated and since maintained since about January 2nd, 2015,
20 an overly broad policy prohibiting and restricting cell phone
21 use on its premises.

22 JUDGE WEDEKIND: Okay. And I explained that given the
23 Board's liberal policy on amendments, the facts of this case,
24 we're still in the GC's case. We haven't gone to the
25 Respondent's case yet. Counsel represented -- again, you said

Excerpt 18

PX 55

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 15, 2015

Pages: 703 through 889

Volume: 6

OFFICIAL REPORTERS

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Vincent Daniels	707	722	723		
Mark Engdahl	726	754	759	760	
Mario Lerma	762	825	847/856	852	
Jake Myers	862	866			
Karen Garzon	871	883	886	887	

1 Whereupon,

2 **KAREN GARZON**

3 having been duly sworn, was called as a witness herein and was
4 examined and testified as follows:

5 THE WITNESS: I do.

6 JUDGE WEDEKIND: Thank you. Please state your name and
7 spell it for us

8 THE WITNESS: Karen, K-A-R-E-N, Garzon, G-A-R-Z-O-N.

9 JUDGE WEDEKIND: Thank you.

10 **DIRECT EXAMINATION**

11 Q BY MS. INESTA: Good afternoon, Ms. Garzon?

12 A Good afternoon.

13 Q And, Ms. Garzon, can you tell us what your title is at
14 Shamrock?

15 A I'm the sanitation supervisor.

16 Q Okay. And how long have you worked for -- for Shamrock?

17 A Twelve years.

18 Q And have you been in the same position that entire time?

19 A No, I start as a regular cleaner.

20 Q Okay. And when -- how long were you a regular cleaner?

21 A For two years, two years.

22 Q And then were you promoted to a different position?

23 A Yeah, to the sanitation supervisor.

24 Q And who do you report to?

25 A John Culligan (phonetic).

1 Q And how many people as sanitation supervisor do you
2 supervise?

3 A Nineteen.

4 Q Okay. And what are your responsibilities in your role as
5 sanitation supervisor?

6 A I -- I'm in charge to check that the warehouse is clean,
7 the entire warehouse.

8 Q And is that the Arizona Food warehouse?

9 A Yes.

10 Q And do you know the address?

11 A 2900 Virginia -- West Virginia.

12 Q And do you recall at some point -- do you know who -- I'm
13 sorry, strike that. Are you familiar with an employee by the
14 name of Steven Phipps?

15 A Yes.

16 Q And did Mr. Phipps in around May 2015, ever hand you a
17 union flyer?

18 A I can't recall the date, but, yes, I remember he have me a
19 union flyer.

20 Q Okay. And you don't recall this -- do you remember what
21 month it was that he handed you the flyer?

22 A I can't recall.

23 Q And was there only one occasion where he ever handed you a
24 union flyer?

25 A Yes.

1 Q Okay. And where were you when he handed you?

2 A I was in --

3 Q -- the flyer?

4 A -- the break room.

5 Q Okay. And if you could make sure you let me finish my
6 question --

7 A I'm sorry.

8 Q -- before you answer. No worries. She's having to type
9 everything up --

10 A Okay.

11 Q -- to create a record so --

12 A Okay.

13 Q -- she can't -- she can only write one person at a time.

14 A Sorry.

15 Q Okay. Thank you.

16 A Thank you.

17 Q I'm sorry, so where were you when he handed you the flyer?

18 A I was sitting in the break room taking my break.

19 Q Okay. And what break room was this that you were in?

20 A Operations break room.

21 Q Okay. And where is that located?

22 A It's upstairs on the second floor close to my office.

23 Q Okay. And -- and what were you doing at the time in the
24 break room?

25 A I just ate -- eating and I was talking to my other

1 coworkers.

2 Q Okay. Were you eating with those coworkers or were you
3 just talking to them?

4 A Well, I was done with my break -- eating and then I was --
5 yeah, I was there after that and I was done with my -- my
6 lunch.

7 Q Okay. And were you sitting or standing when he handed you
8 the flyer?

9 A I was sitting.

10 Q Okay. And do you remember what color the flyer was?

11 A I can't recall that.

12 Q Okay. Do you remember anything about what the flyer said?

13 A No.

14 Q How did you know that it was a union flyer?

15 A Okay --

16 MS. OVIEDO: Objection. Since the witness has not
17 testified as to what the flyer was about.

18 MS. INESTA: Okay.

19 MS. DEMIROK: Foundation.

20 JUDGE WEDEKIND: Start over.

21 Q BY MS. INESTA: What was your understanding about what the
22 flyer was?

23 A Oh, because Monica that was next to me, she asked me to
24 translate to her, so I just look at the title and I said, no,
25 I'm not going to do it.

1 Q Okay. So -- and who -- who was it that you were sitting
2 with, were -- how many people were you sitting with?

3 A Two more people, Monica and Jose.

4 Q Okay. And what is Monica's position?

5 A It's sanitation --

6 Q And are you --

7 A -- cleaner.

8 Q -- are you her supervisor?

9 A Yes.

10 Q Okay. And Jose are you -- what -- what is his --

11 A Same --

12 Q -- position?

13 A -- sanitation.

14 Q Okay. May -- let me finish my -- be sure to let me finish
15 my question --

16 A I'm sorry.

17 Q -- before you answer. I know, it's very -- this is very
18 nervous so it's okay. So Jose is also someone who's a cleaner
19 who reports to you?

20 A Yes.

21 Q And did you see Mr. Phipps -- did Mr. Phipps hand each of
22 you a -- your own flyer?

23 A Yes.

24 Q Okay. And then what happened after that?

25 A Monica asked me to translate her --

1 Q Okay.

2 A -- but I say no. And they -- there were my paper and
3 Jose's paper on the table, I already had Monica's in my hands,
4 so I just picked them up so when Steve approached to us and he
5 say you're not supposed to do that. And I, you know, just
6 handed again to them and I said, do you guys want it back and
7 they say no.

8 Q Okay.

9 A So I just took it back with me and walk away.

10 Q Okay. And did -- when Monica asked you to translate it
11 what did she mean by that?

12 A She wants to know what was there I guess, what it was, you
13 know, saying, the paper.

14 Q Okay. And was the paper in English?

15 A I don't think so because she asked me to translate it.

16 Q Okay. I'm sorry, was the -- was the writing in English?

17 A Yes, yes, sorry, yes.

18 Q Okay. Do you remember seeing any writing that was in
19 Spanish?

20 A No.

21 Q Okay. And then what did you do with the papers after you
22 walked away?

23 A Just tossed them.

24 Q Okay.

25 A Yes -- yeah.

1 Q And when you offered them back to Jose and Monica, were
2 they nervous or upset about it?

3 A No, no.

4 Q Okay. Do you often eat lunch with Monica or Jose?

5 A Yeah, sometimes.

6 Q Okay. And how often do you eat lunch in that break room?

7 A Most of the time.

8 Q Okay. And the break rooms at Shamrock are they dedicated
9 for any particular group of employees or is it --

10 A No, for --

11 Q -- for all employees?

12 A -- everybody.

13 Q Okay. And that includes managers and supervisors?

14 A Yes.

15 JUDGE WEDEKIND: What did you mean by toss them?

16 THE WITNESS: Oh, just -- just took them with me and threw
17 them away.

18 Q MS. INESTA: Did Monica or Jose say anything else about
19 the paper?

20 A No.

21 Q Okay. After you -- they handed you -- Phipps handed --
22 Mr. Phipps handed you the paper did you have any conversation
23 with them about any other topics?

24 A Yeah, I mean, after -- I asked them, you know, do you want
25 it, and I just left.

1 Q Okay. Did the other employees say anything else about the
2 flyer?

3 A No.

4 Q Okay. Did you say anything else to them about the flyer?

5 A No.

6 Q Okay.

7 JUDGE WEDEKIND: Debbie, are you picking that up okay?

8 Are you picking up her answers okay?

9 THE COURT REPORTER: Yes.

10 Q BY MS. INESTA: And have you ever removed any other union
11 flyers from the break room?

12 A Yes, from the counter, yes, I remove.

13 Q Okay. How many times -- well, first of all --

14 A Probably like three times.

15 Q Okay. How did you know that the flyers was related to the
16 union?

17 A Because I just read the title.

18 Q Okay. And -- and how many times did you throw them away
19 from the break room?

20 A About three times.

21 Q Okay. And are there other types of documents that you
22 throw away from the break room?

23 MS. OVIEDO: Objection, Your Honor. This goes to our
24 subpoena issue.

25 JUDGE WEDEKIND: What did you request?

1 MS. OVIEDO: Documents that, you know, such as -- well --
2 could I at least have her -- put her --

3 JUDGE WEDEKIND: Okay. Well -- would you mind stepping
4 out for just a minute and we'll call you back.

5 THE WITNESS: Okay.

6 JUDGE WEDEKIND: Just step out --

7 MS. INESTA: Yeah.

8 JUDGE WEDEKIND: -- just outside the door and we'll.

9 MS. INESTA: Your Honor, may I have --

10 JUDGE WEDEKIND: Okay. So what exactly did you ask for?

11 MS. OVIEDO: We asked for documents, anything, any sort of
12 flyer or memo not provided, well, not only things that the --
13 the employer provides, but other things like Susan G. Komen,
14 Girl Scout cookie stuff, football squares, whatever, things of
15 that nature.

16 JUDGE WEDEKIND: Uh-huh. And --

17 MS. INESTA: Your Honor, what I may ask her about are
18 other things that in the past she's thrown away, which of
19 course we don't have those things because --

20 JUDGE WEDEKIND: Yeah.

21 MS. INESTA: -- we throw them away.

22 JUDGE WEDEKIND: Right.

23 MS. INESTA: So it's going to be --

24 JUDGE WEDEKIND: Right, yeah. I -- I think I'm going to
25 allow it.

1 MS. OVIEDO: Okay.

2 JUDGE WEDEKIND: Unless you have some other objection
3 here.

4 MS. INESTA: I'll go grab her.

5 THE COURT REPORTER: Your voice is very soft.

6 MS. INESTA: Oh. I am very rarely told that my voice is
7 soft. But I'll do -- I place this closer and I'll speak up,
8 yeah.

9 JUDGE WEDEKIND: Okay. You can ask the question again.

10 MS. INESTA: I'm going to ask another one, I'm not every
11 sure what the question was.

12 Q BY MS. INESTA: What is Shamrock's -- Ms. Garzon, what is
13 Shamrocks policy -- regarding what can stay, what can be placed
14 or what documents can be placed on the counters in the break
15 rooms?

16 MS. OVIEDO: Objection. Foundation.

17 JUDGE WEDEKIND: Can you establish some foundation first?

18 MS. INESTA: Uh-huh.

19 Q BY MS. INESTA: Ms. Garzon, as part of your job you are
20 charged with making sure that the break rooms are --

21 MS. OVIEDO: Objection. Leading.

22 Q BY MS. INESTA: -- clean, correct?

23 JUDGE WEDEKIND: Let's start over.

24 MS. INESTA: Okay.

25 JUDGE WEDEKIND: Just go ahead and ask her a question, if

1 you don't lay a foundation for it I'm not going to give it any
2 weight. We'll just do it that way, okay?

3 MS. INESTA: Okay.

4 Q BY MS. INESTA: What is Shamrock's policy regarding what
5 documents can be placed on the --

6 A Just --

7 Q -- I'm sorry --

8 A -- sorry.

9 Q -- on the -- what documents can be placed on the break
10 room counters?

11 A Just the health information, that's the only documents
12 that we give in the break rooms.

13 Q Okay. And how do you -- and how do you know that this is
14 the policy?

15 A Well, since I started that was the policy.

16 Q Okay. And how -- do you remember who first made you aware
17 of this policy?

18 A If I recall I read it in the policy.

19 Q Okay. And is this the policy that you've been following
20 during the time that you've served as supervisor for the
21 department?

22 A Yes.

23 Q Okay. And how many times -- I'm sorry, strike that. How
24 often do you remove documents from the break room counters?

25 A Anytime I find anything that is not a -- a -- the health,

1 any employees paper I just throw them away.

2 Q Okay. And do you recall any particular types of
3 documents, or papers, that you have in the past thrown away?

4 A Yes, like Tupperware, people offering they -- their
5 business cards and stuff.

6 Q And do you read the documents before you throw them away?

7 A No, just over -- I mean, yes, just oversee to know what it
8 is and then I just throw them away.

9 Q Okay. And how often do you think that happens that you
10 find documents that are not like health forms or things
11 related --

12 A Maybe two -- I'm sorry.

13 Q It's okay.

14 A I'm sorry.

15 JUDGE WEDEKIND: We are recording and only --

16 THE WITNESS: Okay.

17 JUDGE WEDEKIND: -- only one person can speak at a time.

18 THE WITNESS: Okay.

19 JUDGE WEDEKIND: So it's very important you wait until the
20 end, the question is over and then answer.

21 THE WITNESS: All right.

22 Q BY MS. INESTA: Okay. How often do you think you find --
23 have found papers and documents that are not like the health
24 forms that are --

25 A Maybe --

1 Q -- put there by the company?

2 A -- maybe one or two times a month.

3 Q Okay. And is there anything that, other than the company
4 documents, that you leave on the counter?

5 A Just the health.

6 Q Okay. Ms. Garzon, have you ever asked employees how they
7 feel about the Union?

8 A No.

9 MS. INESTA: I have no more questions, Your Honor.

10 JUDGE WEDEKIND: Okay. Cross?

11 MS. OVIEDO: Just a moment.

12 MS. DEMIROK: May we go off the record for just a moment?

13 JUDGE WEDEKIND: Okay. Off the record.

14 (Off the record at 4:43 p.m.)

15 JUDGE WEDEKIND: We're on.

16 **CROSS-EXAMINATION**

17 Q BY MS. OVIEDO: Ms. Garzon, you were done with your lunch
18 when Mr. Phipps came in with flyers, correct?

19 A Correct.

20 Q And you supervise Monica and Jose; don't you?

21 A Correct.

22 Q And you took the flyers from Monica and Jose before you
23 asked if they wanted them back, right?

24 MS. INESTA: Objection.

25 THE WITNESS: I don't --

1 MS. INESTA: Misstates the witness's testimony.

2 JUDGE WEDEKIND: Well, it's cross examination, overruled.

3 It was a question. Do you understand the question?

4 THE WITNESS: Will you repeat it please?

5 Q BY MS. OVIEDO: After you took the flyers from Monica and
6 Jose you asked if they wanted them back, right?

7 A Oh, I didn't take it from them.

8 Q After you had them in your hands you asked Monica and Jose
9 if you wanted them, right?

10 A Okay. Monica gave it to me to -- I mean, she asked me to
11 translate her and Jose's was on the table.

12 Q After you had the flyers in your hand you asked if they
13 wanted them; didn't you?

14 A Yes.

15 Q You were instructed to remove the flyers; weren't you?

16 A I'm sorry?

17 Q You were instructed to remove the union flyers from the
18 employee break room; weren't you?

19 A I wasn't instructed to remove the union flyer I was
20 instruct to remove any flyers.

21 Q Okay. So you were instructed to remove union flyers,
22 correct?

23 A No, just everything, anything that is not the health.

24 Q And who instructs you to do that?

25 A Well, I -- I -- I know that -- since I -- since I became

1 supervisor that I -- I remove any flyer from the employees.

2 Q And you knew there were union flyers in the employee break
3 room, right?

4 A Well, I -- yeah, I see the title, yeah. Yeah, yes.

5 Q Have you had any conversations with any other managers
6 about the union flyers?

7 A No.

8 Q Do you have a company email address?

9 A If I -- excuse me?

10 Q Do you have a company email address?

11 A Yes, I do.

12 Q Do you correspond with managers via email?

13 A Yes.

14 Q And it's your testimony that you've never just
15 communicated with other managers about the union flyers before?

16 A No.

17 Q But someone notified you on June 16, 2015, that there were
18 flyers, union flyers, in the employee break room; didn't they?

19 MS. INESTA: Asked and answered.

20 THE WITNESS: I don't -- I don't recall the date.

21 JUDGE WEDEKIND: Overruled.

22 THE WITNESS: I'm sorry, can you repeat the question?

23 Q BY MS. INESTA: On June 16, someone notified you that
24 there were union flyers in the break room; didn't they?

25 A No.

1 Q How did you know that there were union flyers in there
2 that day?

3 A I go to the break rooms every day, I mean, -- I mean, all
4 the time, I mean.

5 Q Were you on break?

6 A I don't recall, I mean --

7 Q Were you there for lunch?

8 A -- that is specific. No, but, I mean, I don't recall if
9 I went to lunch, but I go all -- all the time.

10 Q Did you go there to look for union flyers?

11 A No.

12 MS. OVIEDO: Pass the witness.

13 JUDGE WEDEKIND: You said that you go there all the time;
14 why do you go there all the time?

15 THE WITNESS: Well, because it's my break room and I go
16 get water.

17 JUDGE WEDEKIND: Do you --

18 THE WITNESS: I mean --

19 JUDGE WEDEKIND: -- to use it -- you go there to use the
20 break room?

21 THE WITNESS: Yes, yes.

22 JUDGE WEDEKIND: Thank you. Miss --

23 MS. INESTA: Yeah, I have just one more question.

24 **REDIRECT EXAMINATION**

25 Q BY MS. INESTA: Do you also go to the break -- as part of

1 your duties do you ever go and check the break room?

2 A Correct.

3 Q How often do you check the break room as part of your
4 duties?

5 A I go, like, two or three times a day.

6 Q Okay. And what is the purpose of checking the break
7 rooms?

8 A I check and make sure everything is clean.

9 Q And there's different shifts that come in at different
10 times, correct?

11 A Correct.

12 Q Okay. So there's -- different employees have different
13 break periods?

14 A Yes.

15 Q Okay. So no matter what time of day it's -- is it -- are
16 the break rooms generally busy all throughout the day?

17 A Yes.

18 Q Okay.

19 MS. INESTA: I have no more questions.

20 **RECROSS-EXAMINATION**

21 Q BY MS. OVIEDO: And when you check the break room you
22 check the whole break room, right?

23 A Yes.

24 Q All the tables?

25 A Yes.

1 MS. OVIEDO: No further questions.

2 JUDGE WEDEKIND: Anything else?

3 MS. INESTA: No further questions.

4 JUDGE WEDEKIND: Thank you very much, Ms. Garzon.

5 THE WITNESS: Thank you.

6 JUDGE WEDEKIND: Thank you for your testimony.

7 THE WITNESS: Thank you.

8 JUDGE WEDEKIND: Please don't discuss your testimony with
9 any other witness or potential witness until this proceeding is
10 over, okay.

11 THE WITNESS: Okay, I won't.

12 JUDGE WEDEKIND: Thank you.

13 THE WITNESS: Thank you.

14 JUDGE WEDEKIND: You're free to go. Are we done for the
15 day?

16 MS. OVIEDO: Nice timing.

17 MS. INESTA: Yes.

18 JUDGE WEDEKIND: Okay. That's it. 9:00 tomorrow. Off
19 the record.

20 MS. INESTA: Thank you, Your Honor.

21 JUDGE WEDEKIND: Sure.

22 **(Whereupon, the hearing in the above-entitled matter was**
23 **recessed at 4:50 p.m. until Wednesday, September 16, 2015 at**
24 **9:00 a.m.)**

25

Excerpt 19

PX 56

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

Place: Phoenix, Arizona

Dates: September 16, 2015

Pages: 890 through 982

Volume: 7

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Mark Engdahl	893	896			
Ivan Vaivao	898	928			
Dave Garcia	939	956			
Arthur Manning	965	972			

- 1 A Yes, I have.
- 2 Q And have they acted upon your feedback?
- 3 A Yes, they have.
- 4 Q Is this a new policy?
- 5 A It's been there as long as I know of.
- 6 Q And does that include your prior service, before --
- 7 A Yes.
- 8 Q -- 1994?
- 9 A Yes.
- 10 Q Art, I'm going to hand you what's been admitted as General
- 11 Counsel Exhibit 1-G and ask you to look at page -- I'm sorry --
- 12 page 9, the allegation labeled J. That allegation says that
- 13 you conducted surveillance on behalf of Shamrock at a meeting
- 14 at Denny's by I-17 and Thomas (phonetic). Do you see that
- 15 allegation?
- 16 A Yes, I do.
- 17 Q Okay. And that's dated January 28th?
- 18 A Yes, it does (sic).
- 19 Q Do you recall a meeting at Denny's around that time frame?
- 20 A Yes, I do.
- 21 Q And what do you recall about that meeting?
- 22 A I was asked by a couple employees at Shamrock that --
- 23 would I go to the meeting at Denny's. And I said, "We'll see,
- 24 because I might not get off early enough to go."
- 25 Q Did you know at that point what the meeting was about?

1 A No, I didn't.

2 Q Okay. Did you have an idea it had something to do with
3 work?

4 A Yes.

5 Q Had you had any prior meetings concerning work issues off-
6 site?

7 A Yes, I have.

8 Q Who were those meetings with?

9 A Steve Phipps.

10 Q And what did you and Mr. Phipps discuss?

11 A We talked about the issues at Shamrock.

12 Q By "the issues" you mean --

13 A Some of the things that the employees was bringing up that
14 they felt that it was a need to change.

15 Q Were these meetings scheduled by you or by Mr. Phipps?

16 A Phipps.

17 Q So did you ultimately attend the meeting at Denny's?

18 A Yes, I did.

19 Q All right. And what happened when you attended the
20 meeting?

21 A When I got to Denny's, I went -- I came up to Denny's and
22 went inside. And as you go into Denny's, you got this little
23 lobby and then you go in and there's a first table. And then
24 on the right-hand side you have the long whip-around.

25 So I went there and I sat down, and just waiting and

1 looking and waiting and looking. I sit there for about maybe
2 half an hour, 45 minutes, and nobody showed up.

3 And I said, "Oh, this is just a hoax. They're just
4 messing with me," because we do things like that at work.

5 So I got up to leave, and as I got up and opened the door,
6 there's a walkway that goes down past two rails. There was an
7 individual that was leaning on the rail and he asked me, "Hey,
8 are you in or are you out?"

9 Q And if I can just stop you, did you know this individual?

10 A Joel Rodriguez.

11 Q He's a -- was he a Shamrock employee?

12 A Yes.

13 Q Okay. I'm sorry.

14 A And he asked me, "Are you in or are you out?"

15 And I said, "What are you talking about?"

16 He said, "Are you in or are you out?"

17 And I said, "What are you saying?"

18 He said, "Are you in the union or not?"

19 And I said, "Hell, no."

20 And when he had said that, there was Steve and two other
21 employees there, which had me like in a circle.

22 Q Okay.

23 A And once I said that, they said, "That's it." Steve got
24 up and they left.

25 Q Now, when he asked you are you in or out of the union, was

1 that the first that you knew that that's what this meeting was
2 about?

3 A That is very true. Prior to that, me and Steve had talked
4 numerous of times about the issues of Shamrock, and not once
5 has he mentioned union, nor did I, in those conversations.

6 Q Now, if I can refer you a few pages in --

7 MR. DAWSON: If I may approach, Your Honor?

8 I'm sorry. I'm just going to -- force of habit.

9 Q BY MR. DAWSON: If I can ask you to take a look at
10 page 12, the allegation S, that mentions that you conducted
11 surveillance by telling employees that union had made an
12 announcement in the break room about organizing and that you
13 threatened employees by telling them that the company was
14 watching their back.

15 Did you have a conversation in that time frame with
16 Mr. Phipps where you asked him about announcing his support for
17 the union in the break room?

18 A I don't remember that.

19 Q You don't remember whether it happened or not?

20 A Right.

21 Q In that time frame or any other time frame did you ever
22 tell Mr. Phipps or any other employee to watch their backs
23 because the management was watching them?

24 A No. No.

25 MR. DAWSON: Can I just have a moment, Your Honor?

Excerpt 20

PX 57

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

Shamrock Foods Company, Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

GENERAL COUNSEL EXHIBITS

Place: Phoenix, Arizona

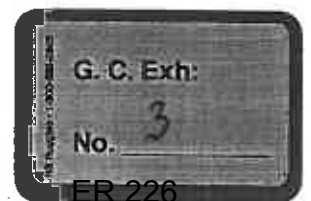
Dates: September 16, 2015

OFFICIAL REPORTERS

AVTranz
E-Reporting and E-Transcription
845 North 3rd Avenue
Phoenix, AZ 85003
(602) 263-0885



Associate Handbook
January 1, 2014





Shamrock Foods Company Associate Handbook

Associates can report actual or perceived violations to supervisors, other managers, or to Human Resources.

As a condition of employment and continued employment, associates are required to sign an Electronic and Telephonic Communications Acknowledgment Form. Applicants are required to sign this form on acceptance of an employment offer by Shamrock.

Discipline for Violations

Associates who violate this policy are subject to disciplinary action, up to and including termination.

Additionally, Shamrock investigates and responds to all reports of violations of Shamrock's blogging rules and guidelines or related company policies or rules. Shamrock reserves the right to discharge, discipline associates or take other appropriate action, including legal action against associates who engage in prohibited or unlawful conduct.

Guidelines to Appropriate Conduct

As an integral member of Shamrock, the associate is expected to accept certain responsibilities, adhere to acceptable business principles in matters of personal conduct, and exhibit a high degree of personal integrity at all times. This involves sincere respect for the rights and feelings of others and refraining from behavior that might be viewed unfavorably by current or potential customers or by the public at large.

Whether the associate is on or off duty, the associate's conduct reflects on Shamrock. The associate is, consequently, encouraged to observe the highest standards of professionalism at all times.

Listed below are some of the rules and regulations of Shamrock. This list should not be viewed as all-inclusive. It is intended only to illustrate the types of behavior and conduct that Shamrock considers inappropriate and grounds for disciplinary action up to and including termination of employment without prior warning, at the sole discretion of the company, including, but not limited to, the following:

- Falsification, forgery or dishonesty in any aspect of employment, including but not limited to falsification of personnel records, time cards, reports, investigations, work methods/practices and using another associate's time cards or passwords/login.
- Theft and/or deliberate damage or destruction of property not belonging to the associate, including the misuse or unauthorized use of any products, property, tools, equipment of any person or the unauthorized use of any company-owned equipment
- Failure to observe all safety practices/policies and to perform the job in the safest and most efficient manner, including wearing prescribed personal safety equipment, reporting all accidents/incidents in a timely manner and complying with all safety rules and regulations
- Failure to adhere to all Departmental rules/practices/procedures, including the failure to work productively for the time period assigned and according to the rules, instructions and work given by supervisors/managers, failing to stay in your work area; failing to work the required time, leaving the work area and or the property without authorization and notification or entering work areas that are unauthorized.
- Violation of any of the work rules or Policies outlined in this Handbook, including but not limited to the appropriate dress policy, anti-workplace violence/ weapons, no smoking, no drugs/alcohol, call-in procedures required by the Department, no-solicitation or distribution or unauthorized access Policies



Shamrock Foods Company Associate Handbook

- Any act that interferes with another associate's right to be free from harassment or prevents an associate's enjoyment of work, including sexual or any other harassment, wasting the associate's time, harming or placing the associate in harm's way, immoral or indecent conduct or conduct that creates a disturbance in the workplace

Shamrock will not construe this policy nor apply it in a manner that interferes with associates' rights under Section 7 of the National Labor Relations Act.

If the associate's performance, work habits, overall attitude, conduct, or demeanor becomes unsatisfactory in the judgment of Shamrock, based on violations either of the above or any other Shamrock policies, procedures, rules, or regulations, the associate will be subject to disciplinary action, up to and including termination.

Discipline will be administered utilizing the following guidelines, but discipline may start at any level within this process.

Step 1	Counseling
Step 2	Verbal Warning
Step 3	Written Warning
Step 4	Final Warning / 3-Day Suspension
Step 5	Termination

Liability Coverage - Privately Owned Vehicles

If the associate drives their privately owned vehicle to conduct business for the Company, the associate is required to have adequate automobile liability limits. Further, the associate is required to possess and carry a current, appropriate, and valid driver's license.

Seat belts must be worn at all times when the associate is driving in the associate's private vehicle while on company business.

Loss of License

Any citation involving suspension, revocation, cancellation, lost privilege, or disqualification must be reported to the associate's immediate supervisor before the end of the business day following the day the associate receives the citation. The associate's supervisor will determine if the associate will be assigned other duties.

Minimum Insurance Requirements

Before the associate is allowed to drive for company purposes they must first have proof of liability insurance. The minimum liability limits will be based upon state law. Anyone that is currently insured with limits less than the required minimum must increase their limits to the minimum immediately.

All associates who drive on company business are required to sign an annual Valid License and Required Insurance Affidavit.

There will be no deviations from or exceptions to this policy. For questions, please contact the Corporate Safety Department.

Excerpt 21

PX 58

SHAMROCK FOOD COMPANY

28-CA-150157

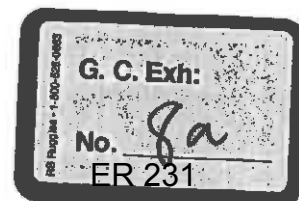
JANUARY 28, 2015, 9 AM

AUDIO RECORDING

AVTranz

845 North 3rd Avenue, Phoenix, Arizona 85003

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1 MR. ENGDAHL: All right. Welcome, everybody. Thank you
2 for all coming in here this morning and thank you in advance
3 for listening to what I've got to tell you. Can everybody hear
4 me? Can you hear me okay in the back? Okay. Let me know if I
5 start drifting down too quiet and you can't hear me anymore.
6 Okay? But usually I'm pretty loud. So -- that you go. So I
7 want to talk to you about something that's been going on in
8 Southern California, and it's relevant to us here too, and I've
9 been going around and talking to every associate in Shamrock
10 about this. So far I've made it through every driver and
11 you're the second group of warehouse people I've talked to.
12 First group I've been through this with are the folks in
13 Southern California. And I'll explain why in a minute.

14 A few months back we had our second campaign in Southern
15 by Teamsters Local 63, trying to organize that group over
16 there. Okay. There was one early on when we first opened up
17 and then there was another attempt here, you know, two and a
18 half years later they came back, knocked on the door again, and
19 tried to organize them for a second time. And I want to tell
20 you about kind of what we went through over there. I want to
21 spend a few minutes today educating every person in this room
22 with some facts and some knowledge, okay?

23 And I'll start off by telling you I'm speaking from
24 experience. I was a teamster for seven years. Okay? This is
25 back a few years when I put myself through college. I drove

EXHIBIT NO. RC-8(a) RECEIVED ☒ REJECTED ☐
28-CA-150157
CASE NO. _____ CASE NAME: Shamrock Foods
35 9-14-15 ER 233
DATE: 9-14-15 REPORTER: D.A.

1 truck and delivered food, and I was in the Seattle area. And
2 up there I was working in what's called a closed shop, where if
3 you had a union in that shop, you had to join it or you
4 couldn't work. Okay. They automatically took my dues out of
5 my paycheck. I had to pay initiation fees. I had to go on
6 strike when they told me to go on strike. Whole bunch of
7 different fun things like that. So I'm speaking from
8 experience, but I'm also going to tell every person in this
9 room, because you're all intelligent, smart folks, trust but
10 verify. Listen to what I'm telling you, and I'm telling you I
11 won't lie to you, but trust but verify. Use the Internet. Go
12 out there. Jump on the Internet. Do your own research.
13 There's tons of stuff out there that's pro-union and there's of
14 stuff out there that's against unions. Okay? And so the
15 material is out there. You can look at it yourself, you can
16 make your own judgments. You know, I'm just presenting, you
17 know, facts today. And I'm telling you about what happened in
18 Southern California. And I'll tell you Southern California is
19 still union free. Okay? And they made good decisions and
20 they're educated now and they understand what the process is.

21 So go ahead, give me a slide here. I told you about that.
22 Give me the next slide. Who knows what a union is? Or maybe a
23 better question is: What is a union? Okay, I'll answer it for
24 you. A union is a business. Simple as that. A union is a
25 business. And what do businesses do? Try to grow? Right?

1 certain communication lines are open and stuff like that, why
2 wouldn't you provide us with, you know, like some type of, you
3 know, documentation that we can read or something like that if
4 we don't know anything about it.

5 MR. ENGDAHL: Well, you probably missed the part. One of
6 the things I opened up with is, I encourage everybody to jump
7 on the Internet and do the research. There's tons of stuff out
8 there pro-union and there's tons of stuff out there anti-union.
9 But I encourage everybody to get the facts.

10 Don't believe what I'm telling you. Don't believe what
11 the video told you. Trust but verify. Go out there and do
12 your research. Get your facts because I know what you'll see.
13 You know, I know -- I know what you'll see out there if you do
14 your research.

15 Yeah. And I'm -- don't get me wrong. I'm not banging on
16 unions. If that's the right thing for certain places, more
17 power to them. That's fine. I just don't think it's the right
18 thing for us here at Shamrock.

19 UNIDENTIFIED MALE: (Indiscernible). They said that we
20 (indiscernible) and a couple people didn't even sign it. Are
21 those people (indiscernible).

22 MR. ENGDAHL: Okay. Let me make sure I have it. I think
23 the question was if --

24 UNIDENTIFIED MALE: You say if somebody else didn't sign
25 it, are they --

Excerpt 22

PX 58

SHAMROCK FOODS COMPANY

28-CA-150157

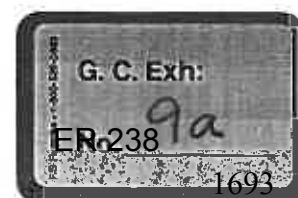
FEBRUARY 24, 2015, 2:30 PM

AUDIO RECORDING

AVTranz

845 North 3rd Avenue, Phoenix, Arizona 85003

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1 UNIDENTIFIED MALE: So here's the -- here's the skinny.
2 All right? We're going to continue with our union education
3 meeting. All right? So that way you folks understand -- know
4 the essentials. We'll continue with the education meetings
5 because members of our team, our associates here, your peers,
6 are still being approached, to a point where they're now
7 uncomfortable, heading up to see Brian and myself about
8 questions that some of the guys that are organizing are
9 bringing up to them. All right?

10 So as long as that happens, we're going to continue to
11 throw out some education out there. Not for them to take my
12 word for it, take Brian's word for it, or anybody's word for
13 it. Do the research. Go out there and do the research.

14 This week a couple guys have been approached with some
15 specifics. But understand these concerns by our associate and
16 our peers are specific to them, very, very specific to them.
17 So to have somebody speak on their financial affairs is
18 concerning to them. All right?

19 Might not be the men in your group. We have a manager at
20 the meat plant being approached. All right? So that was
21 brought up as well. So we kind of have some ideas. All right?
22 Of who's out there. The more concerning is that they're
23 approaching our guys during work hours; during work time, floor
24 time. Work hours is for work. Work time is for work.

25 If they approach you in -- on your break outside from

Excerpt 23

PX 58

SHAMROCK FOODS COMPANY

28-CA-150157

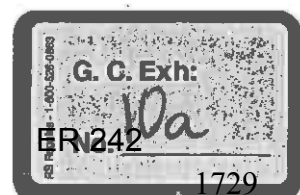
MARCH 26, 2015, 5:40 PM

AUDIO RECORDING

AVTranz

845 North 3rd Avenue, Phoenix, Arizona 85003

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1 throwing out there. All right. So I want everybody to
2 understand that. I'm not going to play a video, because I'm
3 pretty sure you guys are tired of the videos. All right.

4 But whoever is doing that out there, we know who they are,
5 because they come the next day to me. They come the next day
6 to me and tell me that. All right. So I know who they are. I
7 know there's meetings out there. I know there was a meeting a
8 couple -- a few weeks ago. And I know who attended. Okay.
9 It's their right. The guys that are organizing are Shamrock
10 associates. That's who they are. I have to treat these guys
11 like Shamrock associates and family until they do something
12 different than me. All right. But up to this point right
13 here, I want everybody to understand that there's guys out
14 there spreading propaganda about this, that and that other.
15 That's not true. Okay.

16 So any questions, you guys? None.

17 James.

18 MR. ALLEN: Yeah, no. I'm James Allen. I'm new here for
19 a few weeks working in human resources. As you guys know,
20 Shamrock has an open door policy. So if you have an issue, you
21 know (indiscernible) bring it up to right to management, to
22 your management structure. But you know what? If you don't
23 feel comfortable doing that or you feel like it's not being
24 heard, you know, I'm right over there. I'm usually here in the
25 morning early and I'm here after 5. So you can always come by

1 and that's my story right now. It's to fund that. All right.

2 So I don't want anybody third party to speak for me that might

3 change that. All right. That might change that. All right.

4 And that's the struggle that some of these guys -- right --

5 because it's like man, that's a gamble. They might bring more.

6 They might bring a lot less than what I'm making right now.

7 You can gamble with 20 bucks at the casino. All right.

8 But you can't gamble when hey, your in-laws is living with you

9 and you got to take care of them, or your wife is pregnant and

10 we don't know where we're going to live. All right. Those

11 type of things. All right. So it's personal to each and every

12 one of us, you know. Out of the 372 guys that report to me,

13 none of their situations are the same. It's 375 different

14 situations, financial impact situations. All right. So that's

15 the reason why I don't want anybody to speak for me. And

16 that's why I stand where I stand, because I got two kids, three

17 more years to go of both. All right. I want to make sure they

18 graduate and I provide that for them. All right. So I don't

19 want anybody to speak for my financial situation. And you

20 should feel that way. You should stand there and tell whoever

21 it is dude, no. If you talk to me again -- several of the guys

22 are at that point right now and they're coming up to me and

23 says I want to write -- I want a statement that these guys will

24 leave me alone.

25 All right. So that's where we're at right now. Until we

1 have that, we have a little different conversation with them.
2 But we know who the guys are. I want you guys to be aware of
3 that. I want you guys to understand that. That's the biggest
4 thing is education. Understand that. All right. Understand
5 that. That hey, they didn't listen to me, I can go to HR,
6 that's nowhere to be found. I got to go to another dude that
7 doesn't have the background -- HR background that he's got.
8 That guy is going to negotiate for me. That guy used to be a
9 picker last week, and now he's going to negotiate HR type
10 scenarios for me. That's not -- for me, that's not a good
11 gamble to me. All right.

12 So I want you guys to understand that. When you walk out
13 of here, I want you guys to understand. I will continue to
14 have these. As long as I know it's the right thing to do, I'm
15 going to continue to have some of these meetings. All right,
16 guys. But yesterday was a good day. Thank you guys for all
17 the hard work you guys are doing. And tonight might be a long
18 night, but it's part of our business, man. Three, four --
19 about six weeks from now, you know, it's summertime. All
20 right. Different conversation. All right. It's a little
21 different conversation. But right now, man, it's a good time
22 to be a Shamrock associate, man, because it's a lot of hours.
23 All right. So that's the program for right now. All right.
24 Six weeks from now it's going to be a little different. But
25 understand -- like I said, understand your rights. That's the

1 biggest thing I want you' guys to know. All right.

2 James. Now you know who James is.

3 MR. ALLEN: Just so know, too, it's a real simple name,

4 James Allen, A-L-L-E-N. Just Shamrock email, write

5 james_allen. Contact me anytime with anything, especially

6 about some of the issues, you know, you guys are bringing up

7 over here. And you know, bring specifics to me, seriously, and

8 let's -- let me figure out what happened. All right. I'm

9 here.

10 UNIDENTIFIED MALE: Appreciate it, fellas.

11

12 (Recording concludes)

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14

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Excerpt 24

PX 59

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

GENERAL COUNSEL EXHIBITS

Place: Phoenix, Arizona

Dates: September 16, 2015

OFFICIAL REPORTERS

AVTranz
E-Reporting and E-Transcription
845 North 3rd Avenue
Phoenix, AZ 85003
(602) 263-0885

SHAMROCK FOODS COMPANY

28-CA-150157

MARCH 31, 2015

AUDIO RECORDING

AVTranz

845 North 3rd Avenue, Phoenix, Arizona 85003

www.avtranz.com · (800) 257-0885



1 UNIDENTIFIED MALE: Okay.

2 UNIDENTIFIED FEMALE: And so after 3,000 deductible for a
3 family, then it goes to 80/20 to a maximum out-of-pocket of
4 \$8,000. Then you have 100 percent coverage.

5 UNIDENTIFIED MALE: Oh, okay.

6 UNIDENTIFIED MALE: That's right. Any other questions?

7 UNIDENTIFIED MALE: Yeah. Is there any way we can get our
8 old insurance back? You know, 300 million dollars -- I mean
9 it's through the roof. Is that even being considered or
10 anything?

11 UNIDENTIFIED MALE: Well, okay, let's talk about that as
12 far as, you know, sales revenue is not profits. So I think
13 we've always talked about how skinny the margins are in the
14 food service industry. It's pennies on the dollar that we
15 make. So, you know, we made this change on the healthcare
16 program and we tried to do the best job we could explaining
17 why, because quite frankly not only Shamrock Foods, but other
18 companies -- you couldn't afford that cost curve. And so we
19 went to the high deductible consumer-driven plan, the HSA plan.
20 The company made a conscious decision to cover half the
21 deductible. And so that's the plan that we are trying to
22 manage, too.

23 Now for me to say that there will never be a change in the
24 future, I couldn't say that. But this is the plan we're living
25 with today, all of us. And we have to manage that. And it

Excerpt 25

PX 59

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

GENERAL COUNSEL EXHIBITS

Place: Phoenix, Arizona

Dates: September 16, 2015

OFFICIAL REPORTERS

AVTranz
E-Reporting and E-Transcription
845 North 3rd Avenue
Phoenix, AZ 85003
(602) 263-0885

SHAMROCK FOOD COMPANY

28-CA-150157

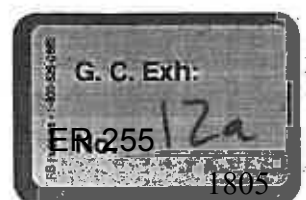
APRIL 29, 2015, 9:47 AM

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1 MR. ENGDAHL: All right, well I'll start off and I'll let
2 these guys do their piece. We owed everybody some follow-up.
3 And, so what we've handed you here is the same thing that's
4 going out to every person in this building, okay. And it's
5 follow-up on what we have talked about a couple times in
6 meetings, where we did some layoffs. We did some other things
7 last year that we felt we didn't handle correctly.

8 So, we're committed to the point where we put it in
9 writing now, okay, that we will not do these things. And you
10 can take that to the bank. So, we owed you that feedback, now
11 we've given it to you. It's in writing. And it's probably not
12 so important for you all. It's more of a lower on the totem
13 pole for folks who were worried about layoffs and things like
14 that. Well, so this will ease some of their fears.

15 But, I wanted to start by giving this all to you all and
16 have a little discussion with you on what's going on here with
17 this union organizing stuff, okay. And, I understand who's
18 behind it. I understand that you don't care what anybody else
19 thinks. I understand that you're doing it for your own
20 personal reasons, and that's great, have at it. But, what I am
21 going to do is straighten out some things with some facts,
22 okay, and some truths. And I'm going to call bullshit on a lot
23 of stuff that's being spread, because it's wrong. It will hurt
24 Shamrock. It will hurt all of you. It will hurt everybody in
25 the future, okay. And I don't want that to happen.

EXHIBIT NO. GC-12(a) RECEIVED ☒ REJECTED ☐
28-CA-150157
CASE NO. _____ CASE NAME: Shamrock Foods
NO. OF PAGES: 13 DATE: 8-14-15 REF: 257 DJ

1 This is all in my opinion. And I'm entitled to my
2 opinion, just like you're entitled to yours, okay. I've been a
3 Teamster for seven years. I was in the union for seven years.
4 I understand it inside and out. I know what it's good for and
5 what it's not good for. And it's not good for us here at
6 Shamrock, I can tell you that, okay.

7 What do you think would happen if we got a union contract?
8 Let's just say, for example, for the forklifters. And here is
9 -- this is in my opinion. Do you think that a union would ever
10 negotiate a higher rate of pay for us here at Shamrock than
11 they would for other people in town? How would a union explain
12 that to other people in town? How would they explain that they
13 got you better benefits, better pay, better work conditions
14 than someone else in town? Think about that logically for a
15 minute.

16 STEVE: Is this an open meeting, or is this closed?

17 MR. ENGDAHL: No, it's not Steve.

18 STEVE: Okay.

19 MR. ENGDAHL: Thank you.

20 STEVE: Just asking.

21 MR. ENGDAHL: It's not. And here again, this is all my
22 opinion. And I'm sharing my opinion with you all because I
23 care about you. I care about Shamrock. I care about our
24 future. I am emotionally invested in this, okay. And I feel
25 very strongly.

1 In my opinion, they'd be crazy to give you all here
2 something more than they've given Cisco or U.S. Because how
3 would they explain that to all of those guys? It'd be pretty
4 hard. It'd be damn hard.

5 People are still upset over our insurance. Well,
6 insurance has changed everywhere. It hasn't changed in some of
7 the Legacy contracts yet, but it will. It's mandated as part
8 of Obamacare. It's going to happen. There's no choice, and
9 none of us are happy about it. It is what it is.

10 There is a bucket of money out there that all of us as
11 food service companies have to provide wages, benefits,
12 equipment, to get the warehouse running right. And if you
13 divide it up different ways -- so could we put more money into
14 health care? Yeah, we could. But it would come out of
15 somewhere else, because we all are selling the same case of
16 green beans for virtually the same amount of money. That's the
17 free market. That's competition. That's how it is. So we all
18 have the same amount of money to divide up, it's just how we do
19 it, right?

20 Here at Shamrock we're blessed. The family doesn't take
21 anything but their wages out of the company. Everything gets
22 reinvested in here. That's why we can build these buildings
23 that we do and have good equipment, have nice break rooms and
24 things like that. So, you've got to really step back and try
25 to be less emotional, more logical, and think about this. What

1 really makes sense or doesn't make sense? All 'right?

2 Another thing I want to cover is Arizona being a right-to-
3 work state. Some of you will be sitting here thinking, well I
4 don't have to participate in the whole union thing. I can opt
5 out if I don't like it, right? I don't have to pay dues,
6 right? That is right. That's exactly right.

7 However, if we were to negotiate a contract, and if
8 something changed in work conditions or wages, you'd be held to
9 that -- whether it was good or bad. That's just the way it is.
10 Nobody can say whether it would be better or worse. You can't,
11 because it's something that's going to happen in the future, or
12 would happen in the future. So you can't guarantee anybody.
13 If anybody wants to guarantee you something's going to happen,
14 have them put it in writing and sign it. Because nobody can
15 guarantee something that hasn't happened yet and that would be
16 up for negotiation, right? So, you've got to think about that
17 too.

18 So, my advice is, whatever side of the table you're on,
19 stand up for what you feel is right. We've got a lot of people
20 on one side of the table working really hard to make Shamrock
21 union. And in my opinion we need the people on the other side
22 of the table to stand up and say, I don't want it. Knock it
23 off. Because if you don't, your voice isn't heard. And all
24 I'm hearing is a lot voices on one side. I'm not hearing them
25 on the other side. All right? Everybody has their opinion.

1 Speak it. Speak your mind.

2 If there's something that you don't like that's going on,
3 bring it up. We'll try to work on it. Are we going to fix
4 everything? Hell no. If we got a union in here, would it fix
5 everything? Hell no. Remember, the company pays wages,
6 benefits, sets work conditions -- not the union. The only
7 thing the union can do is come to collective bargaining and
8 ask. They can ask for things. The company doesn't have to
9 agree to anything, nothing -- other than what they want to.
10 It's bargaining. Bargaining can go on forever. It can never
11 end. It's collective bargaining. All you have to do is
12 bargain in good faith. All right?

13 So these are facts that people don't tell you -- they
14 don't want you to hear. I want you to hear them. I want you
15 to make the right decision for all of you, for all of Shamrock.

16 That's pretty much everything I wanted to cover, guys.
17 I'll turn it over to Ivan the (indiscernible) attorney.

18 IVAN: I just have to -- I want to cover just what's on
19 that memo that covers a lot of the stuff that we are going to
20 do during the off season. I also have -- we're getting all
21 kinds of rumors and people telling us all kinds of stuff. I
22 want to set the record straight.

23 We're going to meet with everybody in the warehouse,
24 because depending on who you talk to in the warehouse, somebody
25 tells them something different. So, some things that have been

Excerpt 26

PX 59

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

Shamrock Foods Company,

Case No. 28-CA-150157

and

Bakery, Confectionary,
Tobacco Workers' and Grain
Millers International Union,
Local Union No. 232, AFL-CIO-
CLC,

GENERAL COUNSEL EXHIBITS

Place: Phoenix, Arizona

Dates: September 16, 2015

OFFICIAL REPORTERS

AVTranz
E-Reporting and E-Transcription
845 North 3rd Avenue
Phoenix, AZ 85003
(602) 263-0885

SHAMROCK FOOD COMPANY

28-CA-150157

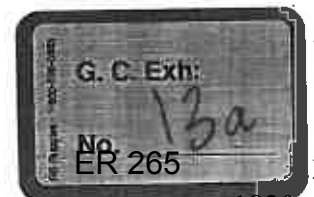
MAY 5, 2015, 2:40 PM

AUDIO RECORDING

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1 UNIDENTIFIED MALE: Another meeting with Ivan?

2 UNIDENTIFIED MALE: What?

3 UNIDENTIFIED MALE: Another meeting with Ivan?

4 UNIDENTIFIED MALE: No.

5 UNIDENTIFIED MALE: So how's it going?

6 UNIDENTIFIED MALE: Nah, I'm going to go towards the
7 market.

8 UNIDENTIFIED MALE: Huh.

9 UNIDENTIFIED MALE: So how's everything?

10 UNIDENTIFIED MALE: As good as it's going. As good as it
11 can be.

12 UNIDENTIFIED MALE: Yeah.

13 UNIDENTIFIED MALE: Yeah.

14 MR. ENGDAHL: Yeah, yeah. No, go -- go ahead and do that,
15 and then when I'm out there I could do that, or whatever with
16 you. Whatever works, because we need the help justify it. No,
17 absolutely. Yeah. Okay. Yeah, yeah. So go ahead and just do
18 it, if you can. No, I get it. I get it. Okay. All right.
19 Thanks, John. Okay. Thanks. Bye. Sorry about that. Mr.
20 Murphy in Portland.

21 MR. LERMA: It's all right.

22 MR. ENGDAHL: So, Mari (phonetic), I don't know if we've
23 ever met formally or not. Mark Engdahl.

24 MR. LERMA: I think maybe one.

25 MR. ENGDAHL: Yeah, I recognize your face, but I don't

EXHIBIT NO. GC-13(a) RECEIVED ☒ REJECTED ☐
28-CA-150157
CASE NO. _____ CASE NAME: Shamrock Foods
NO. OF PAGES: 15 DATE: 9-15-15 REPORTER: DL
ER 267

1 know if we've ever really spoken or not, but I wanted to talk
2 to you today, because there's been, let's just say some
3 rumblings coming off the floor. Okay. And I'm doing this more
4 as a heads-up to you, okay, as wanting you to kind of take note
5 and stay out of trouble. Okay.

6 The words that have come off the floor are that there's
7 some hecklings going on, some insulting going on, and some
8 potential slow down on certain folks who are not sharing a
9 similar point of view. Okay. So I -- I just -- I want you to
10 be aware of that. It has come to our attention, okay. And I
11 want you to understand our position would be that that won't be
12 tolerated. Okay. And you could get in some serious trouble
13 for that. We want to try to avoid that. Okay.

14 So I'm -- I'm speaking as generically as I can, but I'm
15 sure you understand what I'm trying to say --

16 MR. LERMA: Yeah.

17 MR. ENGDAHL: -- and I -- you know, we -- we want to avoid
18 problems that we don't need to have. That's all I'm saying.
19 Okay. And I'm trying to speak as nicely as I can and, you
20 know, at least get the message across, right.

21 MR. LERMA: Yeah.

22 MR. ENGDAHL: Okay. So that was mainly what I wanted
23 to -- to tell you, and I -- I can certainly answer any
24 questions that you might have or talk about anything, at least
25 within reason. I can't, you know, do certain things, but I can

1 certainly and am more than willing to chat you without
2 anything. Okay.

3 MR. LERMA: I just -- I'm just doing what you told me to
4 do. Doing my research in the first meeting that you had.

5 MR. ENGDAHL: Sure.

6 MR. LERMA: And I know there's things that people are
7 saying. There's things that you guys are saying. They -- they
8 conflict each other and --

9 MR. ENGDAHL: Oh, yeah, they do.

10 MR. LERMA: -- and --

11 MR. ENGDAHL: They without a doubt do.

12 MR. LERMA: -- and I see signs that go up, but they're
13 true, but they're not all true. So it's like there's points,
14 but it's not all the points.

15 MR. ENGDAHL: Uh-huh.

16 MR. LERMA: And a lot of people, you know -- people ask me
17 my opinion, and I may tell them my opinion,
18 but --

19 MR. ENGDAHL: And you're entitled to.

20 MR. LERMA: -- but I -- I come back to the same thing that
21 you said in the very first meeting, do you research. And even
22 Ivan has said it --

23 MR. ENGDAHL: Yeah.

24 MR. LERMA: -- do your research. There's web sites out
25 there --

1 MR. ENGDAHL: Yeah.

2 MR. LERMA: -- and you either -- I can't make up no one's
3 mind. No one can make up my mind.

4 MR. ENGDAHL: Exactly.

5 MR. LERMA: Go to the -- go to the web sites, do your
6 research. There's a lot of things out there.

7 MR. ENGDAHL: Yeah, there is. There is. So -- and, you
8 know, I mean -- you know, if there's specific things, you know,
9 questions we can answer or whatever, as long as they're within
10 our range of what we can and can't do, I'm more than willing
11 to, you know, sit down, and talk, and answer 'em and, you know,
12 our best.

13 So -- but the main thing is, you know, we want to -- want
14 to keep things going and ultimately, you know, take care of our
15 customers, because that's ultimately who is paying all our
16 checks, right? And the more efficiently we can do that, the
17 better off we're going to be, the more we're going to grow, you
18 know, the more secure things are going to be for all of us.

19 MR. LERMA: I understand.

20 MR. ENGDAHL: So that's -- that's the ultimate goal.

21 MR. LERMA: Yeah.

22 MR. ENGDAHL: That's all it is.

23 MR. LERMA: They're a priority.

24 MR. ENGDAHL: Absolutely. Absolutely. Okay. Well, and I
25 didn't scare the shit out of you bringing you up here. I

1 didn't intend to do that at all.

2 MR. LERMA: No, because I told my supervisor yesterday
3 about an incident that happened last week, and it seems like --
4 because he -- you pulled me to the side last time trying to say
5 that I was spreading rumors, but you never told me who they
6 were.

7 MR. ENGDAHL: Right.

8 MR. LERMA: Who -- who said that, who came and told you
9 that, but you never told me that, and then -- and then I told
10 my supervisor anytime I try to express my opinion it feels like
11 I get put in hot water. Even though if it's on break or
12 outside the company, it just seems like, hey, you know what,
13 this -- this can't be going on.

14 MR. ENGDAHL: No, it's -- right. It's okay to express
15 your opinion.

16 MR. LERMA: But it --

17 MR. ENGDAHL: Everybody's entitled.

18 MR. LERMA: -- but it doesn't seem like it, because every
19 time -- like it gets back to a supervisor, or manager, or -- or
20 you.

21 MR. ENGDAHL: Uh-huh. Well, and -- and let me help
22 clarify. It's okay to express your opinion, okay, but the part
23 that wouldn't be okay is if it was done in such a way where
24 somebody could perceive it as intimidation, or something like
25 that, right? It's kind of how you do it, if that makes sense,

1 right?

2 MR. LERMA: Yeah.

3 MR. ENGDAHL: Maybe -- maybe just think about that when
4 you are expressing your opinion as to how you're doing it and
5 what not, because maybe -- you know, I'm not saying this is the
6 case, but maybe if that feedback is coming around somehow they
7 are being -- you know, they -- they feel threatened or
8 intimidated. That's all I'm saying. I don't know.

9 UNIDENTIFIED MALE: Right. Just like Mark was explaining
10 to me, right? Mark was explaining that, all right. So last
11 time we talked it impacted people's money.

12 MR. LERMA: Yeah.

13 UNIDENTIFIED MALE: When you -- when you say something it
14 impacts people's money, of course, they're gonna -- they're
15 gonna express it, right? This was when our pay plan went in,
16 right? So when the guys received that, they said, yeah, Mario
17 said that this is what --

18 MR. LERMA: But who are those guys?

19 UNIDENTIFIED MALE: Right, but that's why I followed up,
20 right? I want to follow-up with you to make sure that you --

21 MR. LERMA: But I --

22 UNIDENTIFIED MALE: -- can tell them --

23 MR. LERMA: -- but -- because I know who I told that.

24 And, like I said, when we were down there, if somebody hears
25 from somebody else, that's -- I can't really --

1 UNIDENTIFIED MALE: -- correct.

2 MR. LERMA: -- you know --

3 UNIDENTIFIED MALE: And this is like what I'm saying, it's
4 -- when you -- you're telling your opinion, somebody perceives
5 it, and that's what we hear right now, right? We -- we hear
6 that, hey, you're -- you're -- you're a local voice out there.
7 You -- you tell your opinion in front of -- in front of the
8 guys. All right.

9 So that's what we're hearing right. All right. We're
10 hearing that, hey, Lerma was doing this. All right. Lerma was
11 -- it's coming from this source, all right, type of -- type of
12 situation. Like -- like Mark said, we just got to make sure
13 that we're not doing those type of things up there. We're not
14 -- not heckling guys out there. We're not slowly -- not
15 bringing forks down for guys, for certain individuals. All
16 right.

17 So those are the things -- we want to keep the business
18 rolling. We still want to keep the business rolling. If
19 that's the situation, like Mark said, you would be -- you would
20 find yourself in some deeper troubles.

21 MR. LERMA: Yeah.

22 UNIDENTIFIED MALE: But my job is to make sure that when I
23 hear something, I clarify it. That was something very
24 impactful to their -- their personal finances. They were
25 concerned about it. So that's what they brought up to me, you

1 know. And the source, all right, seems to be the same way, the
2 same source. All right. So --

3 MR. LERMA: Well, if it's the same source, do you think
4 it's somebody that has something against me?

5 UNIDENTIFIED MALE: No, I'm saying these are different
6 -- different guys.

7 MR. LERMA: Because that's what I'm trying to say, like
8 who his this person?

9 UNIDENTIFIED MALE: These are all different -- different
10 -- different guys with their concerns.

11 MR. LERMA: But you can't tell me who it is, or you won't
12 tell me who it is.

13 UNIDENTIFIED MALE: No, I won't tell you who they are --

14 MR. ENGDAHL: Well, we should --

15 UNIDENTIFIED MALE: -- but I couldn't tell you --

16 MR. ENGDAHL: -- just remember --

17 UNIDENTIFIED MALE: -- all right.

18 MR. ENGDAHL: -- you're -- you're not getting in trouble
19 right now.

20 UNIDENTIFIED MALE: Trouble, right.

21 MR. ENGDAHL: We're just talking to you.

22 MR. LERMA: I know, because that's what I told my
23 supervisor last night too, like it's just better for me just to
24 come to work, stay quiet, don't say shit. Just do my work,
25 make my drops, do my put aways, and go home. That's -- that's

1 what I need to do now, because this -- I don't think this is
2 going to happen again, and I -- and I don't see this being a
3 recurring problem.

4 MR. ENGDAHL: Okay. And, like I said, you're not getting
5 in trouble. This is --

6 MR. LERMA: No, I'm trying to protect myself.

7 MR. ENGDAHL: -- I understand.

8 MR. LERMA: Right.

9 UNIDENTIFIED MALE: Right.

10 MR. ENGDAHL: I'm trying to avoid anybody getting in
11 trouble. That's -- because, ultimately, if we're all getting
12 along out here and getting the work done, hey, that's -- that's
13 what this is all about, right? I mean --

14 MR. LERMA: No, we all got bills to pay. Shamrock has
15 bills to pay --

16 MR. ENGDAHL: -- absolutely.

17 MR. LERMA: -- I got bills to pay.

18 MR. ENGDAHL: Absolutely. We don't want anybody, you
19 know, getting -- anything bad happen while we're going through
20 this, ultimately. You're all valuable folks. We can't afford
21 to lose anybody. You know what you're doing, you do a good
22 job. You know, we want you doing that good job, because that's
23 how we service the customers.

24 I don't want to -- I don't want to have to bring in new
25 people to this place. That would be ridiculous. We've got a

1 ton of investment in you -- training you over the years, right.
2 Somebody couldn't just come off the street and do your job.

3 MR. LERMA: Well, that's what was said from my manager. I
4 mean --

5 UNIDENTIFIED MALE: I told you that. I told you that was
6 before, right?

7 MR. LERMA: No, no, no.

8 UNIDENTIFIED MALE: Like I see you -- like I see you as
9 a --

10 MR. LERMA: No, but a manager has told multiple people
11 that, you know what if -- if this were to happen, then we can
12 just bring in temps off the street and replace you guys.

13 MR. ENGDAHL: Well, you know, you can technically say
14 that, but you know as well as I do how well that would work.

15 MR. LERMA: Well, there's -- I know I could call on at
16 least three people that --

17 MR. ENGDAHL: I -- I -- I get that. And what they're
18 saying is probably something in regards to if there was a
19 strike, ring replacements workers in. And the answer to that
20 is, yeah, you could. It's -- it's true. We would never want
21 to get to that point here at Shamrock, I can tell you that.

22 MR. LERMA: Yeah, I know, like --

23 MR. ENGDAHL: It's not worth it. I -- I personally have
24 been out on strike. It's (indiscernible).

25 MR. LERMA: Yeah, and like some of the older people that

1 -- the supervisors and managers are (indiscernible) this, and
2 then like a sign -- like a new sign came up today with dues.

3 MR. ENGDAHL: Yeah.

4 MR. LERMA: I read it as soon as I came in and --

5 MR. ENGDAHL: Yeah.

6 MR. LERMA: -- and I actually got a phone call before I
7 even got here about, like, hey -- because in the first meeting
8 you had a -- you said that the Union dues are \$1300, \$1400,
9 then there's blue signs everywhere that says Union dues are
10 \$600.

11 MR. ENGDAHL: Yeah.

12 MR. LERMA: So they don't -- they're saying, well, what's
13 the actual number?

14 MR. ENGDAHL: There's been --

15 UNIDENTIFIED MALE: There's not --

16 MR. ENGDAHL: -- there's different --

17 UNIDENTIFIED MALE: -- there's different --

18 MR. ENGDAHL: -- amounts for --

19 UNIDENTIFIED MALE: -- there's different --

20 MR. ENGDAHL: -- different unions. So --

21 MR. LERMA: Yeah.

22 MR. ENGDAHL: -- you know, there's a range of it out
23 there, but the -- the point is there's some sort of dues that
24 gets charged. Generally, it's two-and-a-half hours a month of
25 what you make, is the general. At least that's what it was

1 when I was in. Okay. But, you know, I -- I used to equate it
2 to cases of beer I couldn't buy.

3 MR. LERMA: I can probably do the same thing.

4 MR. ENGDAHL: It was -- you know, so -- you know, just --
5 you know --

6 MR. LERMA: Well, I'm -- like I told my supervisor
7 yesterday, it --it's just best for my best interest to do my
8 own thing --

9 MR. ENGDAHL: Sure.

10 MR. LERMA: -- and just to do my job and go home.

11 MR. ENGDAHL: I get it. And -- and that's -- that's
12 great, you know, but I would have -- or we would have been
13 doing you a disservice not to at least tell you, okay, what we
14 were hearing so that you're aware of it. Okay. And it's --
15 it's as simple as that. That's all it is. So end -- end of
16 discussion in my opinion. Okay.

17 MR. LERMA: Okay.

18 MR. ENGDAHL: All right. Cool.

19 MR. LERMA: That works.

20 UNIDENTIFIED MALE: All right.

21 MR. LERMA: All right.

22 MR. ENGDAHL: Thank you, sir, I appreciate it.

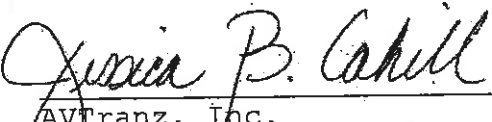
23 (Recording concludes)

24

25

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated: September 8, 2015


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Excerpt 27

PX 72

Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
28-CA-160100	September 15, 2015

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Shamrock Foods Company	b. Tel. No. (602)272-6721
d. Address (street, city, state ZIP code) 2228 North Black Canyon Highway, Phoenix, AZ 85009-2791	e. Employer Representative Norman McClelland, owner
i. Type of Establishment (factory, nursing home, hotel) Sales and Distribution	j. Principal Product or Service Foods and dairy products
	k. Number of workers at dispute location +/- 1000

l. The above-named employer has engaged in and is engaging unfair labor practices within the meaning of section 8(a), subsections (1), (3) & (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Based upon on the allegations outlined in the Complaint and Notice of Hearing (Complaint) in Case 28-CA-150157, the appropriate remedy being requested by the Bakery, Confectionary, Tobacco Workers' and Grain Millers International Union, Local Union No. 232, AFL-CIO-CLC (Union) is a bargaining order under *NLRB v. Gissel Packing Corp.*, 395 U.S. 575 (1969), because there is only a slight possibility of traditional remedies erasing the effects of the unfair labor practices in the Complaint, and the conduction of a fair election.

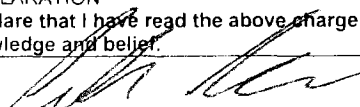
3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union, Local Union No. 232, AFL-CIO-CLC

4a. Address (street and number, city, state, and ZIP code) 3117 North 16th Street, Suite 220, Phoenix, AZ 85016-7679	4b. Tel. No. (602) 274-1261
	4c. Cell No.
	4d. Fax No. (602) 279-1948
	4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

Bakery, Confectionery, Tobacco Workers' and Grain Millers International Union, Local Union No. 232, AFL-CIO-CLC

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. (510) 337-1001
By: 	Caroline Cohen, Attorney	Office, if any, Cell No.
(signature of representative or person making charge)	Print Name and Title	Fax No. (510) 337-1023
Address: 1001 Marina Village Pkwy, Ste. 200 Alameda, CA 94501	Date: September 15, 2015	e-Mail ccohen@unioncounsel.net drosefeld@unioncounsel.net acrowley@unioncounsel.net

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

1/829864

Excerpt 28

RX 3



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 N CENTRAL AVE
STE 1400
PHOENIX, AZ 85004-3019

Agency Website: www.nlrb.gov
Telephone: (602)640-2160
Fax: (602)640-2178

Agent's Direct Dial: (602) 640-2123

September 18, 2015

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Washington, DC 20036

Re: Shamrock Foods Company
Case 28-CA-160100

Dear Counsel:

I have been assigned to investigate the charge in the referenced case, which was filed on September 16, 2015, by Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local Union No. 232 (the Union). The charge alleges that Shamrock Foods Company (the Employer) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). This is to request that you submit evidence in support of the Employer's position in this matter.

The Charge: The Charging Party is requesting a bargaining order to remedy the allegations outlined in the Complaint and Notice of Hearing (Complaint) in Case 28-CA-150157 under *NLRB v. Gissel Packing Corp.*, 395 U.S. 575 (1969). Specifically, the Charging party alleges that it has collected authorization cards from a majority of warehouse employees and that there is only a slight possibility that a fair election could be conducted given the nature of the unfair labor practices at issue in the above mentioned case or that traditional remedies could erase the effects of those unfair labor practices.

Documents: Please provide the following documents, along with any and all other evidence you deem to be relevant to the case:

Shamrock Foods Company
Case 28-CA-160100

- 2 -

September 18, 2015

1. Documents, including but not limited to, payroll records, schedules and rosters, as will show the total number of warehouse employees who work at the Phoenix, Arizona distribution center delineated by category of work performed at the warehouse as of the payroll period that ended immediately preceding September 16, 2015 and the payroll period ending immediately after that date. *Native format preferred.*
2. Such documents should include names of employees working in each category.
3. Documents should also include job descriptions, qualifications, and pay rates for each category of employee.
4. A statement of position regarding the issue presented in this case to include any relevant case law that the Employer is relying upon in support of its position.

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by September 24, 2015. Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to **www.nlr.gov**, select **E-File Documents**, enter the **NLRB case number (28-CA-160100)**, and follow the detailed instructions. If I have not received all your evidence by the due date or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

Please contact me at your earliest convenience by telephone, (602) 640-2123, or e-mail, sara.demirok@nlrb.gov, so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

Sara S. Demirok
Field Attorney

Excerpt 29

RX4

MILLIGAN LAWLESS, P.C.

James Burr Shields, II
Arizona Bar No. 011711
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Attorneys for Respondent

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

CORNELE A. OVERSTREET,

Petitioner,

vs.

SHAMROCK FOODS COMPANY,

Respondent.

Case No. 2:15-cv-01785-DJH

**DECLARATION OF ART
MANNING IN SUPPORT OF
RESPONDENT'S MEMORANDUM
IN OPPOSITION TO
PETITIONER'S PETITION FOR
TEMPORARY INJUNCTION
UNDER SECTION 10(j) OF THE
NATIONAL LABOR RELATIONS
ACT**

1 I, Art Manning, declare as follows:

2 1. I am currently a floor captain for Shamrock Foods Company ("Shamrock") at
3 its Phoenix distribution center. I make this declaration based on my personal knowledge in
4 support of Respondent's Memorandum in Opposition to Petitioner's Petition for
5 Temporary Injunction under Section 10(j) of the National Labor Relations Act. If called
6 upon to do so, I could and would personally and competently testify to the following facts.
7

8 2. In my role as floor captain, I assist in directing and monitoring employees as
9 necessary to help ensure that projects are completed on a timely basis.
10

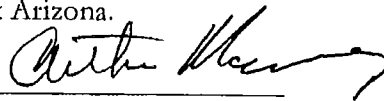
11 3. In my role as floor captain, I do not have authority to hire, transfer, suspend,
12 lay off, recall, promote, discharge, reward, discipline or direct employees, or to adjust their
13 grievances.
14

15 4. In my role as floor captain, I have no authority to determine the work to be
16 done or the number of employees that will be used to complete it. Further, an employee
17 who declines an assignment or direction from me is not considered insubordinate. An
18 assignment is considered to be a work order for insubordination purposes only if it comes
19 from a Shamrock supervisor.
20

21 5. In my role as floor captain, I am not held responsible for the performance of
22 other employees assigned to complete work.

23 6. I declare under penalty of perjury under the laws of the United States that the
24 foregoing is true and correct.
25

26 Executed on October 14, 2015, at Phoenix Arizona.

27 
ART MANNING
28

Excerpt 30

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

CORNELE A. OVERSTREET,

Petitioner,

vs.

SHAMROCK FOODS COMPANY,

Respondent.

Case No. 2:15-cv-01785-DJH

**DECLARATION OF IVAN VAIVAO
IN SUPPORT OF RESPONDENT'S
MEMORANDUM IN OPPOSITION
TO PETITIONER'S PETITION FOR
TEMPORARY INJUNCTION
UNDER SECTION 10(j) OF THE
NATIONAL LABOR RELATIONS
ACT**

1 I, Ivan Vaivao, declare as follows:

2 1. I am currently a Warehouse Manager for Shamrock Foods Company
3 (“Shamrock”) at its Phoenix distribution center. I make this declaration based on my
4 personal knowledge in support of Respondent’s Memorandum in Opposition to
5 Petitioner’s Petition for Temporary Injunction under Section 10(j) of the National
6 Labor Relations Act. If called upon to do so, I could and would personally and
7 competently testify to the following facts.
8

9 2. Shamrock has no knowledge of the particular classifications that the
10 Union is seeking to include in its proposed unit. Despite its claimed majority status,
11 the Union has never filed an election petition or otherwise identified the unit of
12 employees it seeks to represent. A proposed unit at could exceed 550 employees in
13 numerous combinations of more than 30 different classifications.
14

15 3. The Phoenix distribution center is not scheduled to close. Nor are
16 there any large groups of employees on the cusp of losing their jobs or otherwise
17 having their employment conditions substantially altered.
18

19 4. In late May of 2015, Shamrock granted wages increases to
20 approximately 33 individuals at the Phoenix distribution center. These individuals
21 worked in the Returns, Will Call and Sanitation departments, and in one of
22 Shamrock’s thrower classifications.
23

24 5. The May 2015 wage increases were based on legitimate business
25 reasons. In regard to the Returns, Will Call and Sanitation departments, Shamrock
26 was experiencing significant difficulty in attracting candidates for open positions. As a
27 result, Shamrock began using workers from a temporary labor service. Upon
28

1 contracting with the temporary service, Shamrock learned that its own pay scale was
2 \$2 per hour lower than the temporary service offered to its employees. Shamrock
3 therefore increased its scale to match the temporary service in regard to employees in
4 Returns and Will Call.
5

6 6. With respect to Sanitation, while Shamrock was not able to match the
7 temporary service's scale for Sanitation employees, it nonetheless increased the
8 Sanitation scale by \$1.00 per hour.
9

10 7. The May 2015 wage increase granted to employees in the Thrower
11 classification was the result of a change in Shamrock's operation that took effect in
12 approximately April 2015. In short, this operational change required these employees
13 to handle up to 1,500 additional cases in a single shift, a significant increase in their
14 workload. Based on this workload increase, Shamrock raised the hourly rate for these
15 employees by \$1.
16

17 8. I declare under penalty of perjury under the laws of the United States
18 that the foregoing is true and correct.
19

20 Executed on October 15, 2015, at San Diego, California.

21 
22 IVAN VAIVAO
23
24
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28

Certificate of Service

I hereby certify that I electronically filed the foregoing Appellant's Excerpts of Record (Volume II of II) with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 3, 2016. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: March 3, 2016

/s/ David B. Rivkin, Jr.
David B. Rivkin, Jr.